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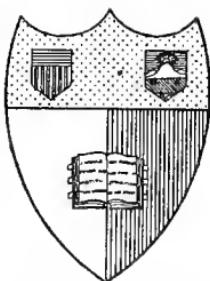
# The Union of England and Wales.

BY

W. LLEWELYN WILLIAMS, B.C.L., M.P.

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# THE UNION OF ENGLAND AND WALES<sup>1</sup>

By W. LLEWELYN WILLIAMS, B.C.L., M.P.

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"My next example is Wales. This country was said to be reduced by Henry the Third. It was said more truly to be so by Edward the First. But though then conquered, it was not looked upon as any part of the realm of England. Its old constitution, whatever that may have been, was destroyed ; and no good one was substituted in its place. The care of that tract was put into the hands of lords marchers—a form of government of a very singular kind ; a strange heterogeneous monster, something between hostility and government ; perhaps it has a sort of resemblance, according to the modes of those times, to that of a commander-in-chief at present, to whom all civil power is granted as secondary. The manners of the Welsh nation followed the genius of the government ; the people were ferocious, restive, savage, and uncultivated ; sometimes composed, never pacified. Wales, within itself, was in perpetual disorder ; and it kept the frontier of England in perpetual alarm. Benefits from it to the State there were none. Wales was only known to England by incursion and invasion.

"Sir, during that state of things, parliament was not idle. They attempted to subdue the fierce spirit of the Welsh by all sorts of rigorous laws. . . . . In short, when the statute book was not quite so much swelled as it is now, you find no less than fifteen acts of penal regulation on the subject of Wales.

"Here we rub our hands—a fine body of precedents for the authority of parliament and the use of it!—I admit it fully ; and pray add likewise to these precedents, that all the while Wales rid this kingdom like an incubus ; that it was an unprofitable and oppressive burden ; and that an Englishman travelling in that country could not go six yards from the high road without being murdered.

"The march of the human mind is slow. Sir, it was not, until after

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<sup>1</sup> Read (in part) before the Honourable Society of Cymmrodorion at 64 Chancery Lane, on 8 May 1908 ; Chairman, J. Herbert Lewis, Esq., M.P., Junior Lord of the Treasury.

two hundred years, discovered that, by an eternal law, Providence has decreed vexation to violence, and poverty to rapine. Your ancestors did, however, at length open their eyes to the ill husbandry of injustice. They found that the tyranny of a free people could of all tyrannies the least be endured ; and that laws made against a whole nation were not the most effectual methods for securing its obedience. Accordingly in the twenty-seventh year of Henry VIII the course was entirely altered. With a preamble stating the entire and perfect rights of the crown of England, it gave to the Welsh all the rights and privileges of English subjects. A political order was established ; the military power gave way to the civil ; the marches were turned into counties. But that a nation should have a right to English liberties, and yet no share at all in the fundamental security of these liberties—the grant of their own property—seemed a thing so incongruous that, eight years after, that is, in the thirty-fifth of that reign, a complete and not ill-proportioned representation by counties and boroughs was bestowed upon Wales, by Act of Parliament. From that moment, as by a charm, the tumults subsided, obedience was restored, peace, order, and civilisation followed in the train of liberty.—When the day-star of the English constitution had arisen in their hearts, all was harmony within and without :—

“Simul alba nautis  
Stella refusit,  
Defluit axis agitatus humor :  
Concidunt venti, fugiuntque nubes,  
Et minax (quod sic voluere) ponto  
Unda recumbit.”

BURKE: *Speech on Conciliation with America*, pp. 484-6.

LECKY, writing of the effects of the Act of Union of 1707 upon the national character and social condition of the Scottish people, asserts that “there are very few instances on record in which a nation passed in so short a time from a state of barbarism to a state of civilisation, in which the tendencies and leading features of the national character were so profoundly modified, and in which the separate causes of the change are so clearly discernible.”<sup>1</sup> Burke, in the glowing passage cited above from his speech

<sup>1</sup> Lecky, *History of England*, vol. ii, p. 320.

on “Conciliation with America”, may have allowed his enthusiasm for the British constitution to carry him too far. Some of his references to the course of events in Wales are inexact, and his description of the destruction of barbarism at the brightness of the coming of English liberty is too roseate for the historian’s prose. Yet in substance the great orator’s account is borne out by the facts of the case. Never was there a country seemingly more unfit for freedom than was the Wales of Henry VIII; never was statesmanship more speedily and more abidingly justified of a bold and generous experiment. “An old and haughty nation, proud in arms” became converted, in the course of a single generation, into a peaceful and industrious people. A country which for centuries had been desolated by private feuds, where anarchy and lawlessness had been universal, and where an appeal to a court of justice had been looked upon as the sign of a craven spirit, was suddenly transformed, as if by magic, into the home of a people whose respect for, and obedience to, the law were only equalled by their eagerness to have recourse to it in every cause, however great or however trivial.

“A better people to govern than the Welsh Europe holdeth not”, was the testimony of Sir Henry Sidney, whom Queen Elizabeth sent to govern Wales as President of the Court of the Marches. Sidney took an intelligent and sympathetic interest in the people whom he ruled. It was owing to his advice and active encouragement that Dr. Powel published, in 1584, his *History of Cambria*. In the preface Dr. Powel bears witness to the change that had been wrought in Wales by the legislation of Henry VIII.

“Concerning the alteration of the estate, there was never anie thing so beneficiall to the common people of Wales as the uniting of the countrie to the crowne and kingdom of England, whereby not onlie the maladie and hurt of the dissention that

oftened happened between the Princes of the countrie, which they ruled, is now taken awaie, but also an uniformitie of government established, whereby all controversies are examined, heard, and decided within the countrie: so that now the countrie of Wales (I dare boldly affirm it) is in as good order for quietness & obedience as anie country in Europe: for if the rulers & teachers be good & doo their duties, the people are willing to learn, readie to obeie, & loath to offend or displease."

"Surely those lawes have brought Wales to great civiltie for that evill government that was here in ould time," wrote another Elizabethan,<sup>1</sup> "for it is as safe travailing for a stranger here in Wales as in any part of Christendome, whereas in old time it is said robberies & murthers were very common." In another passage<sup>2</sup> he is even more emphatic. "No other country in England so flourished in one hundred yeares as Wales hath don, sithence the government of H. 7 to this tyme, insomuch that if o' ffathers weare nowe lyvinge they would thinke it som straunge cuntrey inhabited with a forran Nation, so altered is the cuntrey & cuntreymen, the people changed in hertt w<sup>th</sup>in and the land altered in hewe w<sup>th</sup>out, from evill to good, and from badd to better."

Another witness, who knew the country intimately and who was by no means too favourably inclined to the "Welshery", may be cited. In 1575, Gerard, the Vice-President of the Court of the Council of the Marches, and afterwards Lord Chancellor of Ireland, prepared a memorandum for Elizabeth's ministers, entitled "A Discourse on the State of Wales." He is emphatic in his testimony to the good order prevailing in the Principality. "At this daie", he wrote :

<sup>1</sup> George Owen's "Dialogue of the Government of Wales" (1595), reprinted in Part iii of *Owen's Pembrokeshire*, pp. 91-92.

<sup>2</sup> *Ibid.*, p. 56.

"It is to be affirmed that in Wales universallie are as civile people & obedient to lawe as are in England. Throughowte Wales in every respect Justice embrased and with as indifferent trialles executed as in England, during the tyme of her Majestes Reigne, except 3<sup>e</sup> or 4<sup>or</sup> petty Corners, Noe treason hard of, very seldome murder, in vi years togeather, vnneth on Robbery(committed by the highe waye) harde of. Stealinge of cattell is the chief evill that generall moste annoyeth the countrey."

An even more authoritative and striking testimony to the miraculous change which had been effected in Wales was borne by the preamble to the statute 21 Jac. i, c. 10. The laws of Wales, it is said, were for the most part agreeable to those of England, and were obeyed "with great alacrity", and the greatness of the "quiet" which prevailed was used as an argument against "any further change or innovation".

It is only necessary to refer to Sir John Wynn's *History of the Gwydir Family*, and to Lord Herbert of Cherbury's fragment of *Autobiography*, to realise the revolution which had occurred in the social condition of Wales in the course of less than half-a-century. Sir John Wynn's description of the state of Carnarvonshire and Denbighshire after the close of the Wars of the Roses—the endless bloody quarrels which were carried on from generation to generation, the private wars that went on unchecked by any government, and the consequent insecurity of life and property—shows that the arm of the law was powerless and that the whole country had sunk into hopeless anarchy. Sooner than live in constant hostility with his hereditary enemies in Carnarvonshire, Sir John's great-grandfather migrated to the wilds of Denbighshire, where he dwelt surrounded by outlaws. It was better, he said, to live in obscurity in the valley of the Conway than to be at continual strife with his kinsmen and neighbours in his native

county of Carnarvon. Lord Herbert's great-grandfather, Sir Richard Herbert of Montgomery, who died in 1539, was "a great suppressor of rebels, thieves, and outlaws"; and his son by his second wife, Edward Herbert, who continued his work in Mid-Wales, is said to have been "noted to be a great enemy to the outlaws and thieves of his time, who robbed in great numbers in the mountains of Montgomeryshire, for the suppressinge of whom he went both day and night to the places where they were."<sup>1</sup> The traditions of the Wynn and Herbert families are amply confirmed by references in the State Papers, and by the poems of contemporary Welsh bards. It will be the aim of this paper to describe the steps by which this startling change in the condition of Wales, and in the character of the people, was effected in so short a time. Whatever view be taken of the wisdom of the general policy of Henry VIII, it cannot be denied that in the case of Wales the statesmanship of those who conceived and carried out a novel and audacious experiment was triumphantly vindicated.

There is one curious feature which distinguishes the Union of Wales with England from that of Scotland and that of Ireland. It is notorious that the Act of Union of 1801 was never popular in Ireland. It was passed through the Irish Parliament with difficulty, and it has remained a festering sore in the political and social life of the people. Nor was the Scottish Act of Union popular at the time in Scotland. Burton has shown how, for one or two generations, it was bitterly resented by nearly all classes. Smollett, in the middle of the eighteenth century, and Sir Walter Scott, in the early years of the last century, detested it. Scotland became reconciled to the Union

<sup>1</sup> Lord Herbert's *Autobiography*, Ward and Lock's edition, pp. 14-15.

only when it became prosperous. It was the effect of the commercial clauses that made incorporation with the “predominant partner” tolerable. “The sacrifice of a nationality”, observes Lecky,<sup>1</sup> “is a measure which naturally produces such intense and such enduring discontent that it never should be exacted unless it can be accompanied by some political or material advantages that are so great, and at the same time so evident, as to prove a corrective.”

The Union of Wales with England was never unpopular in Wales. There are, indeed, indications that the English Parliament and English ministers were somewhat doubtful of its wisdom and uncertain of its effect. In Wales itself it was heartily welcomed, and in the course of the four centuries that have since elapsed there has never been a petition, or an application, or a demand from the people of Wales for its repeal. If tradition is to be relied on, the Union was a boon that was granted to Wales at the request of certain enlightened Welshmen of that age. Lord Herbert of Cherbury, in his *History of the Reign of Henry VIII*, sets out at length a curious address, or petition, which is said to have been despatched to the King. It is not known who the author or authors of the petition may have been. As it was, probably, found by Lord Herbert among his family papers, it may be conjectured that either his grandfather, Edward Herbert, or his great-grandfather, Sir Richard Herbert of Montgomery, was in some way concerned in it. Nicholas, in his *Annals of the Counties of Wales*, presumably on the authority of Theophilus Jones, the historian of Breconshire, states that its author was Sir John Price, or Prys, of Brecon:—

<sup>1</sup> *History of England*, vol. ii, p. 303.

"May it please your Highness,

"We, on the part of your Highnesses subjects, inhabiting that portion of the island which our invaders first called Wales, most humbly prostrate at your Highnesses feet, do crave to be received and adopted into the same laws, and privileges, which your other subjects enjoy: Neither shall it hinder us (we hope) that we have lived so long under our own. For as they were both enacted by authority of our ancient law-givers, and obeyed for many successions of ages, we trust your Highness will pardon us, if we thought it neither easy nor safe so suddenly to relinquish them. We shall not presume yet to compare them with these now used, and less shall we contest how good and equal in themselves they are. Only if the defence of them and our liberty against the Romans, Saxons, and Danes for so many hundred years, and lastly against the Normans, as long as they pretended no title but the sword, was thought just and honourable, we presume it will not be infamous now. . . . . So that we crave pardon, Sir, if we say it was fit for the honour of your dominions that some part of it should never be conquered. We then in the name of whatsoever in your Highnesses possession hath in any age held out against all invaders, do here voluntarily resign and humble ourselves to that sovereignty, which we acknowledge so well invested in your Highness. Nor is this the first time; we have always attended on occasion to unite ourselves to the greater and better parts of the island.

"But as the kings of this realm, weary of their attempts in person against us did formerly give not only our country to those who could conquer it, but permitted them *jura regalia* within their several precincts; so it was impossible to come to an agreement, while so many that undertook this work usurped martial and absolute power and jurisdiction in all they acquired without establishing any equal justice. And that all offenders flying from one lordship marcher (for so they were termed) to another did both avoid the punishment of the law, and easily commit those robberies which formerly tainted the honour of our parts. So that until the rigorous laws not only of the several conquerors of England, but the attempters on our parts, were brought to an equal moderation, no union, how much soever affected by us, could ensue.

"Therefore, and not sooner, we submitted ourselves to Edward the first, a prince who made both many and equal laws than any before him, therefore we defended his son

Edward the second, when not only the English forsook him, but ourselves might have recovered our former liberty, had we desired it. Therefore we got victories for Edward the third, and stood firm during all the dissensions of this realm to his grandchild and successor Richard the second. Only if some amongst us resisted Henry the fourth, your Highness may better suppose the reason than we tell it, though divers foreigners openly refusing to treat with him as a sovereign and lawful prince, have sufficiently published it. We did not yet decline a due obedience to Henry the fifth, though in doubtful times, we cannot deny but many refractory persons have appeared. Howsoever, we never joined ourselves with the English rebels or took occasion thereby to recover our liberty, though in Richard the second's time, and during all the civil wars betwixt Lancaster and York, much occasion was given. For adhering to the House of York, which we conceived the better title, we conserved our devotion still to the Crown, until your Highnesses father's time, who (bearing his name and blood from us) was the more cheerfully assisted by our predecessors in his title to the crown, which your Highness doth presently enjoy. And thus, Sir, if we gave anciently proof of a generous courage in defending our laws and country, we have given no less proof of a loyal fidelity since we first rendered ourselves. In so much that we may truly affirm, that after our acceptance of the condition given us by Edward the first, we have omitted no occasion of performing the duty of loving subjects. Neither is there anything that comforts us more than that all those controversies about succession (which so long wasted this land) are determined in your Highnesses person, in whom we acknowledge both Houses to be happily united.

"To your Highness therefore we offer all obedience, desiring only that we may be defended against the insults of our malignant censurers. For we are not the offspring of the runaway Britains (as they term us) but natives of a country which, besides defending itself, received all those who came to us for succours. Give us then, Sir, permission to say that they wrong us much who pretend our country was not inhabited before them, or that it failed in a due piety, when it was so hospitable to all that fled thither for refuge: Which also will be more credible when it shall be remembered that even our highest mountains furnish good beef and mutton, not only to all the inhabitants, but supply England in great quantity. We humbly

beseech your Highness therefore that this note may be taken from us. As for our language, though it seems harsh, it is that yet which was spoken anciently, not only in this island but in France; some dialects whereof therefore remain still amongst the Bas-Bretons there, and here in Cornwall. Neither will any man doubt it when he shall find those words of the ancient Gaulish language repeated by the Latin authors, to signify the same thing amongst us to-day: Nor shall it be a disparagement (we hope) that it is spoken so much in the throat, since the Florentine and Spaniard affect this pronunciation, as believing words that sound so deep proceed from the heart. So that if we have retained this language longer than the more northern inhabitants of this island (whose speech appears manifestly to be a kind of English, and consequently introduced by the Saxons) we hope it will be no imputation to us: your Highness will have but the more tongues to serve you: It shall not hinder us to study English, when it were but to learn how we might the better serve and obey your Highness: To whose laws we most humbly desire again to be adopted, and doubt not, but if in all countries the mountains have afforded as eminent wits and spirits as any other part, ours also by your Highnesses good favour and employment may receive that esteem."

The reason for the instantaneous and permanent popularity of the Union in Wales lay in the fact that it did not entail any "sacrifice of nationality", as was to some extent the case with Scotland and Ireland. Wales became, for the first time, a coherent and organised country; before that time it was not even a geographical expression. It might have been expected that Welshmen, whose devotion to their mother-tongue has always been profound and passionate, would have resented its super-session as the official language of the Principality by English. The reference in the preamble of the Act of Union to the Welsh tongue is not flattering or even true, and there can be little doubt that neither King Henry nor his ministers regarded with any great measure of forbearance the prolongation of its life. On the other hand, we

need not suppose that the ostracism of the vernacular tongue was as complete in official circles as it afterwards became. The Justices of the Peace who were entrusted with the task of administering the law were probably nearly all Welsh-speaking Welshmen, for the gentry of Wales only abandoned "the old fair treasure of their native speech" in the eighteenth and nineteenth centuries.<sup>1</sup> Gerard mentions the fact that one of his judicial colleagues on the Court of the Marches knew Welsh, and Elizabeth's ministers early became impressed with the desirability of having Welsh-speaking judges in Wales. Sir John Price, the champion and inspirer of the Act of Union, was the author of the first book ever printed in Welsh.<sup>2</sup> Queen Elizabeth, acting under the advice of Sir William Cecil, himself the third in descent from a genuine old Welsh family—the Seisyllts of Allt-yr-ynys—was a patron of Welsh letters. Early in her reign the Scriptures were ordered to be translated into Welsh. "If it please God once to send them the Bible in their owne language, according to the godlie lawes alreadie established," wrote Dr. Powel, in his Preface to the *History of Cambria*, "the countrie of Wales will be comparable to anie countrie in England." Within a few years his pious wish was fulfilled. Bishop Morgan's Welsh Bible appeared in 1588, and it (for it became the foundation of the Authorised Version of 1622) has remained ever since the canon of Welsh prose. Dr. Johnson, in his *Tour in the Hebrides*,<sup>3</sup> stated that in his time (1773) "there were lately some who thought it reason-

<sup>1</sup> Lord Herbert of Cherbury, for example, was sent to the wilds of Denbighshire in order that he might learn Welsh in his boyhood.

<sup>2</sup> *Oll Synwyr pen pob Cymero*, printed in London, 1546. For an excellent account of Sir John and the proofs of his authorship of the first Welsh book, see J. H. Davies's edition of *Oll Synwyr* in the Guild of Graduates Series (Jarvis and Foster, Bangor).

<sup>3</sup> At p. 85.

able to refuse them (the Highlanders) a version of the Holy Scriptures that they might have no monument of their native tongue". Maurice Kyffin, in the reign of Elizabeth, mentions that he had lately come across a cleric in an Eisteddfod, who uttered similar "devilish" sentiments about Welsh.<sup>1</sup> But, fortunately, the statesmen of Elizabeth took a more generous and enlightened view of the part which the language should play in the national life of Wales.

Similarly, it might have been expected that Welshmen would have preferred to cling to the old laws and customs of the country than to adopt a strange system of land tenure and a law of inheritance to which they were averse. But though the Welsh peasant has never quite grasped the conditions of English land tenure or appreciated the justice or utility of the law of primogeniture, there never has been any feeling of hostility to the Union because it was accompanied by these changes. Never, indeed, was there such a violent change effected with so little resistance. The Welsh are essentially a conservative race, who are keenly sensitive to the living influence of the past. Yet they passively allowed King Henry to break with Rome, to dissolve the monasteries, and to alter the religious services, to place the Welsh language under an official ban, to extirpate the old Welsh laws and customs, and to revolutionise the whole social and political condition of the country, without a protest or a murmur. The reason for this tame acceptance of their Sovereign's will was twofold. First, there was the passionate loyalty to the Welsh dynasty, a far more potent force with Welshmen of the sixteenth century than we are sometimes disposed to credit. "All the waters of Wye will not wash away your

<sup>1</sup> At p. xiv in the "Preface to the Reader" in his *Deffyniad Ffylod Eglwys Loegr*, Guild of Graduates Reprints, 1908 (Jarvis and Foster).

Majesty's Welsh blood", exclaimed Fluellen to Henry V. What was a jest to the playwright was sober earnest to the countrymen of the Tudors. Secondly, these changes were accompanied by those "material and political advantages" which are said to act as a "corrective" in such cases. Wales, even more than England, had suffered from "lack of governance" in the fifteenth century :—

"Ni a roem yr awr yma  
Dreth aur am lywodraeth dda,"<sup>1</sup>

wearily exclaimed Llawdden, in the midst of the unrest of the Wars of the Roses. "Good government" was what Wales wanted, and it was a source of peculiar pride to Welshmen that they obtained it from a Welsh dynasty.

George Owen, who understood Wales and Welshmen as few men have done, comments on the paradox of a conservative people accepting, with cordial readiness, the gravest changes in their estate. In his *Dialogue on the Government of Wales*<sup>2</sup> he makes Bartholl draw his interlocutor's attention to this singular fact.

"*Bar*: I much marvaile how upon the first alteracion of the government of Wales (when King Henry VIII utterlie abolished the Welsh lawes and brought in the English lawes) the counties received the same quietlie and w<sup>th</sup>out great grudging and some rebellion : for new government and alteration of auntient lawes is not easily receaved into any common wealth w<sup>th</sup>out tumultes, and innovation in government is accounted very dangerous in a common wealth. And yet I heare not of you y<sup>t</sup> Wales repined at altering their Lawes or inducing a new government."

"*Demetus*: So it is dangerous to alter any thing in a well governed

<sup>1</sup> "We would give this hour a gold tax for good government."

<sup>2</sup> P. 91, Part iii, of *Owen's Pembrokeshire*. Cf. also *Ibid.*, p. 53: "Wheras before the sayd statute of Henry VIII wee in Wales had no such officers (as J.P.'s), nor any o<sup>n</sup> man almost of o<sup>r</sup> Nation that bare any authoritye in the comen-wealth. But such officers as wee had in Wales were for the most part straungers of other cuntreys lyving on the spoyle of the poor afflicted Welshmen."

Commonwealth such as Wales then was not. But to such as live in bondage and slaverie, innovacions and alteracions from Crneltie to Justice are sweet and pleasant: and then we y<sup>e</sup> poore Welshmen y<sup>t</sup> were cruellie oppressed by o<sup>r</sup> governors, I mean the Strangers that were Stewards Justices Sherifes and others, who had law to judg as pleased them, and not to justifie as we deserved, were very glad of those new lawes, and embraced the same w<sup>th</sup> joyfull hertes: and this caused those Lawes to be receaved so quietlie, wheras in times past many a bloudie battaile was fought before they receaved the cruell English Lawes and Lawgivers wherew<sup>th</sup> they were oppressed."

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#### WALES AFTER THE CONQUEST.

Before the reign of Henry VIII the Principality of Wales was much smaller and less important than it has since become. After the fall of Llewelyn, in 1282, the Principality was annexed to the English Crown, and divided into the "three ancient shires of North Wales", viz., Anglesey, Carnarvon, and Merioneth. Flint, which was at one time a parcel of the palatine county of Chester, was finally annexed to Wales in the reign of Edward II. Carmarthen and Cardigan, alone of the districts of South Wales, became shire-ground in the time of Edward I, with their own sheriffs and courts. The rest of Wales was called "The Marches", which was governed by one hundred and forty-three Lords Marchers. These included the ancient Welsh principality of Powys, though in one respect it seems to have differed from the ordinary Lordship Marcher. George Owen, in the *Treatise of Lordshippes Marchers in Wales*,<sup>1</sup> gives an account, which is worth recalling here, though some doubt is cast on his entire accuracy by his most recent and scholarly editor :—<sup>2</sup>

<sup>1</sup> *Owen's Pembrokeshire*, Part iii, pp. 154-5.

<sup>2</sup> See note 4 on p. 156 of *Owen's Pembrokeshire*, Part iii, and Egerton Phillipmore's note on p. 246.

"The auncient lord thereof, Griffith y<sup>e</sup> sone of Meredith ap Blethin, seeing y<sup>e</sup> kings of England and y<sup>e</sup> other English lords to prepare themselves to make a conquest of Wales, in discretion and pollicye, submitted himself to Henry y<sup>e</sup> first, & yelded to hold all his country of Powys, of y<sup>e</sup> kings of England in chief, as y<sup>e</sup> English Lords Marchers did, & to do y<sup>e</sup> king y<sup>e</sup> like service . . . Thereupon he was suffered by y<sup>e</sup> king to enjoye all his auncient inheritance in Wales . . . and was by Henry y<sup>e</sup> first created Lord of Powys, and made baron of y<sup>e</sup> Parliament of England, whose heir female, afterwards named Hawis Gadarne, fell to be y<sup>e</sup> kinges ward . . . who bestowed her in marriage upon a valiant gentleman of y<sup>e</sup> kinges named John Charlton. . . . So that, differing in this from many parts of Wales, where the Lords Marchers granted new manors to their followers irrespective of the old cantref or commote division, in this lordship of Powys, and y<sup>e</sup> rest of y<sup>e</sup> auncient members hereof, y<sup>e</sup> commotes remain intier and whole in bounds, and retayne y<sup>e</sup> auntient names without alteration to this day."

A Court Baron was held in each commote, but there was no Manor "holden of yt", no division into knight's fees, carucates, or ploughlands, or oxlands.<sup>1</sup>

Though the ancient Gwynedd, as well as Cardigan and Carmarthen, were held by the Crown after the death of Llewelyn, their internal organisation was in this respect similar to that of Powys. "The like shall you find in all y<sup>e</sup> principalitye y<sup>e</sup> lands in y<sup>e</sup> countreys of Anglesey, Carnarvon, Merioneth, Flint, Carmarthen, and Cardigan."

The distinctive mark of a Lordship Marcher was the castle, for it was the badge and symbol that the neighbouring lands had been won by conquest. "There is scarce a castle iu Wales, being in number 143 castles, but is knowne att this day to have been builded by some English lord or other."<sup>2</sup> *Brevis domini regis non currit in Wallia* was true of all the Lordships Marchers except the county palatine of Pembroke, "which was counted part of England, and, therefore, called Little England beyond

<sup>1</sup> Owen's *Pembrokeshire*, Part iii, p. 157.

<sup>2</sup> *Ibid.*, p. 171.

Wales. Neither was there any sheriff or other officers of ye king to execute any of ye kinges writs or precepts in Wales . . . . . Therefore these lordes themselves were forced of necessity to execute lawes of soverayne governors over their tenants and people in those strange countreys and lordships subdned by them.”<sup>1</sup>

Naturally, as there were one hundred and forty-three Lords Marchers exercising semi-regal authority in various parts of Wales, great diversity of law and practice prevailed.

“The said Lords Marchers, being English lords, executed ye English lawes for ye most part within their lordships, and brought ye most part of ye lands of ye said lordships to be English tenure, and passed ye same according to ye lawes of England, viz., by fine &c., and such parts as they left to ye auncient inhabitants of ye country to possesse, being for ye most part ye barrenest soiles, was permitted by some lordes to be holden by ye old Welsh custome as to passe ye same by surrender in court, which they called in their country language *kof llys*<sup>2</sup> and *ystym yalen*,<sup>3</sup> whereof this word of *ystynol* was derived, and where such custome was permitted, there is noe deed to be found of any lands of that nature before . . . . They brought in ye execution of ye English lawes in every Lordship Marcher in Wales, saving that they permitted unto ye auncient tenants certeyn poynts of ye old Welsh lawes, which were nothing noysome to ye lords nor repugnant to ye lawes of England . . . under ye name of customes, among which was graunted ye use of Gavelkind for parting ye lands by surrender in court, and not by fine, feoffment, and livery of seisin and atturment which were ceremonies were never known nor required by ye auncient lawes of Wales. . . . This was used onelie amongst ye Welshmen that were permitted to enjoye their auncient lands in some Lordships Marchers, for ye lordes were not able to bring with them sufficient nomber of people to inhabit ye whole countreys they subdued; but where the Lords parted ye

<sup>1</sup> *Owen's Pembrokeshire*, Part iii, p. 139.

<sup>2</sup> *Cof Llys*, the record of the court.

<sup>3</sup> *Estyn ialen*, the delivery of the rod. the usual symbol in English copyholds.

Englishmen yt came with them, and gave them lauds, the said Welsh customes were not used, but they held all their lands according to the lawes of England, and y<sup>e</sup> eldest sonne had y<sup>e</sup> whole inheritance, and for this cause, in many lordships there was a Welsh court for y<sup>e</sup> Welshmen by themselves, where their Welsh customes were observed, and y<sup>e</sup> Englishmen had another court apart for themselves: and in common speech among them, y<sup>e</sup> one part is yet to this day called y<sup>e</sup> Englishrie and y<sup>e</sup> other part y<sup>e</sup> Welshrie. Examples whereof you shall find in Gower; in Coity Anglicana and Coity Wallia; and Avan Anglicana and Avan Wallicana; English Talgarth and Welsh Talgarth; and in Narberth . . . Alsoe in Forinseca Kidwelly Anglicana and Comota Kidwelly Wallicana, and Llanstephan Dominium Wallicanum and Llanstephan Dominium Anglicanum, and in many other lordships in Wales: where you shall commonly find y<sup>e</sup> land in y<sup>e</sup> one to be of y<sup>e</sup> Welsh tenure and auntientlie was partible betweene brothers and surrendered in court, and in y<sup>e</sup> other of English tenure, and always passed by feoffment and other conveyances att y<sup>e</sup> common law before Wales was shire ground.”<sup>1</sup>

In other lordships again, though gavelkind prevailed, land would pass by feoffment, and not by surrender, and these were called “lands of English tenure and Welch dole”. But “many lordes did utterly extirpat both Welsh lawes and Welsh dole, and wrought all as in England: and these matters and customes were permitted or denied in every lordship as pleased y<sup>e</sup> first conquerors thereof”.

Cells of St. John of Jerusalem did not originally have the same privileges as Lords Marchers by conquest, but gradually by grant and custom they attained a like position. “To hold *in capite* in Wales in auncient time was sufficient to make a Lord Marcher, and of necessity the Lord thereof was forced to take upon him y<sup>e</sup> regall authority of a Lord Marcher.”

The greatest of the Lordships Marchers were the County Palatine of Pembroke and the lordship of Glamorgan,

<sup>1</sup> *Owen's Pembrokeshire*, Part iii, pp. 144-7.

which were organised on the same lines as English counties. The county of Pembroke was, however, less extensive than the English-speaking part of modern Pembrokeshire. It did not include Lamphey, Haverford-west, Walwyn's Castle, Slebech, and Narberth. Dewisland was under the Bishop, and Kemmes was a separate lordship.<sup>1</sup> It had one limitation which did not apply to any other Lordship Marcher—the king's writ ran through its territory. The lordship of Glamorgan was also smaller than the modern county. The lordship of Gower was outside its boundaries as well as the “Blainaū”, the hill districts where the Welsh dwelt under their own chiefs and enjoyed their own laws and customs. The Lordship, from the time when Robert of Gloucester married Fitzhamon's daughter, became an appanage of the great western earldom. The Lordship proper, the Corpus Comitatus, consisted of thirty-six knight's fees which did suit to the castle of Cardiff, where the sheriff held his monthly court, and the Chancellor on the day following for “matters of conscience”. The “members” consisted of the twelve chief lordships, which had like regal jurisdiction, except that a writ of error lay to the Chancery of Glamorgan, and that the suitors, and not the presiding officer, were judges. The possessions of the Cathedral of Llandaff and of the religious houses were also held of the Lord, who even claimed to have the gift of the bishopric.<sup>2</sup>

The towns were few, small, and of little importance. They sprang up around the baronial castle, and partook more of the character of English garrisons than of centres

<sup>1</sup> Tout's “Welsh Shires”, *Y Cymmrodor*, vol. ix, pt. ii.

<sup>2</sup> Tout, *supra*, and see an instructive and learned article by Dr. Henry Owen, “English Law in Wales and the Marches,” *Y Cymmrodor*, vol. xiv. As to the claim to the gift of the see, *vide* J. E. Morris's *Welsh Wars of Edward I.*

of trade and commerce. "Although most of the inhabitants of those towns are become now more Welsh in language and manner of living", wrote George Owen, in his *Treatise of the Lordshipps Marchers*, "yet doe manye retayne ye English names, and most places about those townes doe give great libertyes to Englishmen of those townes."<sup>1</sup> Some years earlier, in 1587, John Penry, the first Welsh Nonconformist, said that "there is never a market town in Wales where English is not as rife as Welsh". They held their liberties by charter from their lords, and were governed by mayors and bailiffs, or by stewards.

The existence of so many Lords Marchers, armed with such absolute authority,<sup>2</sup> was a source of grave danger both to the King's power and to the good condition of the people of Wales. So powerful, indeed, did the Lords Marchers become, that, to an extent hardly appreciated by English historians, they turned the scale in every political crisis in England,<sup>3</sup> and made and unmade dynasties at their caprice. Edward I was strong enough to maintain some semblance of authority over them. The first statute of Westminster (3 Edw. I, c. 17) enacted that the King who is sovereign Lord over all shall do right there (*i.e.*, in the Marches) unto such as will complain, and after the death of Llewelyn, he showed that he did not intend them to be mere idle words. He actively inter-

<sup>1</sup> *Owen's Pembrokeshire*, Part iii, p. 168. Cf. *Ibid.*, p. 103.

<sup>2</sup> For the powers of the Lords Marchers, see Dr. Owen's article on "English Law in Wales and the Marches," *I' Cymroddor*, vol. xiv.

<sup>3</sup> Morris, *Welsh Wars of Edward I*, p. 221. "Such a position [as Lord of Glamorgan] influenced the Clare's status as a feudal baron of England. A baron who owed to the King the service of more than four hundred and fifty knights, in addition to being Lord of Glamorgan, simply held the balance of power in any crisis against the Crown."

ferred in the dispute which had arisen between the Earl of Gloucester as Lord of Glamorgan and the Earl of Hereford, and decided it as judge, as if the two earls were only ordinary subjects.<sup>1</sup> Edward III, who had in early life experienced the dangers that might arise to the English throne from the over-grown power of the Mortimers and the other Lords Marchers, enacted (28 Edw. III, c. 2) that “all the Lords of the Marches of Wales shall be perpetually attending and annexed to the Crown of England, as they and their ancestors have been at all times past, and not to the Principality of Wales”. He, like his grandfather, was determined to show that the King had more than a mere semblance of authority over his subjects in the Marches. In 1331 he sent commissioners to inquire into the acts of Richard de Peshale and Alinia, his wife, the daughter and heiress of William de Breos, the Lord of Gower.<sup>2</sup> But such occasional exercises of feudal suzerainty were not sufficient to keep the authority of the Lords Marchers within bounds. Mr. Justice Stephen<sup>3</sup> aptly compares their position to that of “the small rajahs to whom much of the territory of the Panjab and North West Provinces still belong”. Twenty-one of them sat in Parliament in virtue of their Welsh lordships in the reigns of the first three Edwards, although, so destructive had been their wars, in the time of George Owen, “onlie Abergavenny att this day still continueth his place and name, and in y<sup>e</sup> line and blood of y<sup>e</sup> first conqueror thereof”.<sup>4</sup> In the meantime they had played their

<sup>1</sup> For a detailed and interesting account of Edward's attempt to curb the powers and privileges of the Lords Marchers by taking advantage of the feud between the two Earls, see c. vi of J. E. Morris's *Welsh Wars of Edward I*.

<sup>2</sup> Clark's *Cartae et alia Munimenta de Glamorgan*, i, 279-282.

<sup>3</sup> *History of Criminal Law*.

<sup>4</sup> “Treatise of Lordshipps Marchers in Wales,” *Owen's Pemb.*, iii, p. 170.

vigorous and decisive part in the affairs of England. The House of York derived its chief support from Wales and the Marches,<sup>1</sup> where, as heirs to the Mortimers, they were not only the most powerful of the Lords Marchers, but as the descendants of Gladys Ddu, the daughter of Llewelyn the Great, they were regarded with singular affection by Welsh bards and people. Henry Bolingbroke was not only Duke of Lancaster, and in that capacity a Lord Marcher, but as Earl of Hereford he owned vast possessions in a district which was largely Welsh,<sup>2</sup> and which was claimed to be under the jurisdiction of the Court of the Marches in late Stuart times. Warwick the King-maker was head of the great Marcher house of Neville; the Duke of Buckingham was Lord of Brecknock as well as chief justice and chamberlain of South and North Wales, and his undoing was largely due to his failure to enlist the co-operation of Rhys ap Thomas in his adventure;<sup>3</sup> and the later phases of the Wars of the Roses were to some extent a contest for supremacy in Wales and the Marches of the Yorkish and Lancastrian Earls of Pembroke. In truth, the Wars of the Roses were to an unsuspected degree a March quarrel. The political motive for their outbreak has always been regarded as inadequate. The ambition of Richard of York, and the fiery spirit of his son Edward, may account for the part they played; but why should they have succeeded in embroiling all England in their rivalry with the House of Lancaster? The key to the mystery lies in the politics of the Welsh Marches. There

<sup>1</sup> See, e.g., the Petition to Hen. VIII, *supra*.

<sup>2</sup> For a detailed and curious account of the English conquest of West Herefordshire see Mr. Egerton Phillimore in *Owen's Pembr.*, Part iii, pp. 264-276.

<sup>3</sup> See Gairdner's *Richard III*, p. 219.

the Barons had been accustomed to private wars. After the rebellion of Glendower the country had never settled down; the King's authority was shadowy, unreal, and seldom enforced; each Lord Marcher did what seemed good in his own eyes. Henry of Lancaster and Richard of York were rivals in the Marches, and the Wars of the Roses were only March wars on a larger scale. The majority of the persons who were prominently engaged in them were Marcher lords, or they held similar positions on the Scottish march. The troops employed were very largely drawn from the marches of Wales. The scale was finally turned when Welshmen withdrew from their traditional loyalty to the House of York and transferred their allegiance to Lancaster. Had Prince Edward been spared after Tewkesbury, the course of English history would have been different. By his death Henry Tudor, "*hil Gadwaladr, paladr pér*", "of the line of Cadwaladr of the beautiful shaft", became the representative of the House of Lancaster. Howel Aerddren, in his "Ode to Patrick", sang—<sup>1</sup>

"Thy descent was purer than Baron or Duke's, for it fell  
from a Briton,

"The Welsh will all flock to thee,—subdue thou England and  
despoil her men."

The chance of avenging the Conquest of 1282 and of placing a Welshman of the royal line on the English throne was sufficient to rally all Welshmen to the Lancastrian standard. Hitherto they had been fighting for feudal lord or baron; for a Mortimer, for a Neville, or a Fitz-alan. At Bosworth they fought for a kinsman of

<sup>1</sup> Aberystwyth MSS. I am indebted for this and other citations from the fifteenth century poets to an excellent unpublished paper by Mr. W. Garmon Jones, of Liverpool University, on "*Wales in the Fifteenth Century*".

Glyndwr, a prince descended from the royal stock of North and South Wales. The force of the popular enthusiasm carried the Welsh chiefs and the Lords Marchers on its sweeping tide. Buckingham plotted against Richard, and fled to his tenants at Brecon when pursued by the wrath of the King. Rhys ap Thomas of Dinevor, whose grandfather, Griffith ap Nicholas, had fallen for the White Rose at Mortimer's Cross, cast aside the prejudices of his youth and cordially espoused the cause of Henry Tudor. No one can read the account of the landing of Henry at Milford Haven, of his progress through Wales gathering adherents, and of his crowning triumph at Bosworth Field, without being impressed with the fact that without the enthusiasm of his countrymen such an adventure would have been impossible. It is estimated that the total number of men whom Henry commanded at Bosworth was only five thousand.<sup>1</sup> He had had no time to collect troops in England, even had he been able to levy any adherents. The fortnight that had elapsed since his landing had mainly been spent in Wales. Lord Stanley, though married to Henry's mother, took no part in the battle. Sir William Stanley's desertion, which turned the fortune of the day, brought the Welshmen of North Wales to the support of their countryman. Sir William's subsequent career shows that he was no keen partisan of the Tudor. It is no wild conjecture that his desertion of Richard was due to the temper of his Welsh followers. For months before the Welsh bards had been exhorting their countrymen to fight

<sup>1</sup> Gairdner's *Richard III*, p. 235. Of these, according to Polydore Virgil, five hundred had joined at Newport (Salop) under Sir Gilbert Talbot. What means Henry employed to gather Welsh troops may be inferred from a very curious letter which he sent to his kinsman John ap Meredith on his landing at Milford Haven, and which is given in Wynne's *History of the Gwydir Family*, pp. 55-6.

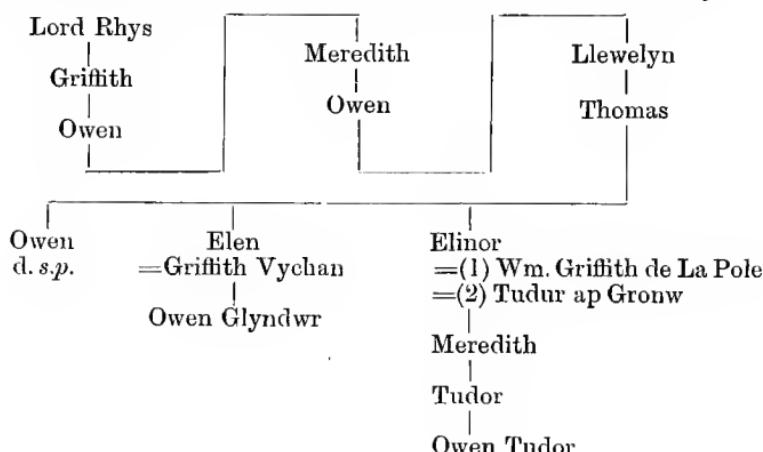
for the Tudor. In their mystical “*brudiau*”, or rhyming prophecies, they had predicted the victory of Henry. He was the grandson of Owen Tudor, and was not Owen of the Red Hand to return from over seas to deliver his countrymen—

“Tame the Saxon, forgive not one single traitor.  
When the Bull comes from the far land of battle,  
Let the far-splitting spear shed the blood of the Saxon on the  
stubble.”

Such was the spirit of the exhortations which were addressed by the bards to their eager countrymen. In England Henry Tudor might be accepted as the representative of the Red Rose. To Welshmen he was one of their own race. One of the three standards<sup>1</sup> under which he fought at Bosworth was the Red Dragon of Wales. Englishmen might regard his marriage with Elizabeth Plantagenet as the union of the two roses. Welshmen regarded it as the union of the descendant of the Lord Rhys of Dinevor with the heiress of Llewelyn the Great.<sup>2</sup>

<sup>1</sup> The first banner was emblazoned with the figure of St. George, the second with the Red Dragon of Cadwaladr, “a red fiery dragon beaten upon white and green saranet” (Hall, 423), and the third with the dun cow of the Tudors.

<sup>2</sup> The following table shows the Tudor descent from Lord Rhys:—



Henry himself was careful to foster this idea. He refused to base his title to the English throne only or mainly on his Lancastrian descent, or his Yorkish marriage, or his Parliamentary title. He claimed the crown of England by right of conquest. Alone of English sovereigns he was crowned on the field of battle. His first act on entering London was an assertion of his title by conquest. "He went first into St. Paul's Church, where, not meaning that the people should forget too soon that he came in by battle", said Bacon,<sup>1</sup> "he made offertory of his standards, and had orizons and *Te Deum* sung." Henry's insistence on his title by conquest has puzzled English historians, from Bacon downwards, who have chosen to regard his accession as the natural and inevitable outcome of the Wars of the Roses. Henry himself never forgot his Welsh blood, or the services which his countrymen rendered to him at the crisis of his fortunes. After ascending the throne he sent a commission to Wales to inquire into and publish his Welsh descent.<sup>2</sup> This is said to have been due to his sensitiveness to the charge that he was of a mean and ignoble lineage. It is more probable that he wished to proclaim to the world that he was descended from the Welsh princely line, and to conciliate the Welsh by showing that a scion of the house of Cadwaladr sat on the English throne. Mr. Pollard<sup>3</sup> has revived an old legend that the Tudors "were a Welsh family of modest means and doubtful antecedents. They claimed, it is true, descent from Cadwaladr, and their

<sup>1</sup> Bacon's *Henry VII*, Spedding's edition, vol. vi, p. 32.

<sup>2</sup> For the pedigree of the Tudors, as found by the Commissioners, see Powel's *History of Cambria*.

<sup>3</sup> Pollard's *Henry VIII*, p. 5. Hall makes King Richard, in his address to his troops at Bosworth, call him "an unknown Welshman, whose father I never knew, nor him personally saw".

pedigree was as long and quite as veracious as most Welsh genealogies." It is, perhaps, little to the purpose to trace in detail the Tudor line. Suffice it to say that the Tudors were descended, though not in the male line, from the old Welsh princes, that their antecedents were not doubtful, and that whatever Mr. Pollard may think of Welsh genealogies, those who have constantly to use and test them have arrived at a very different conclusion as to their trustworthiness, until they reach the dim and distant centuries of the Christian era. What is of interest is that Henry should have been anxious to proclaim his Welsh descent. He called his eldest son Arthur after the Cymric national hero. A foreign writer, writing in 1500, said of the Welsh that "they may now be said to have recovered their former independence, for the most wise and fortunate Henry VII is a Welshman".<sup>1</sup> Henry VII did not feel secure on his throne for many years. Bacon remarks that he never slaked in his hostility to the House of York. When the impostors, Lambert Simnel and Perkin Warbeck, invaded the realm, it was to Wales that he largely turned for support.<sup>2</sup> England had become to a large extent a settled country. Even the destructive Wars of the Roses had hardly affected the common people. So little interest was there felt in the quarrel that in the decisive and final battle of the war only some ten thousand combatants were engaged. But Wales was in different case. It was given up to the pursuit of arms as a profession. The restrictive acts of Henry IV, passed during and after the rebellion of Glendower, had remained a dead letter. They were only meant to apply

<sup>1</sup> *An Italian Relation of the Island of England*, published by the Camden Society.

<sup>2</sup> See the account given in the *Cambrian Register* of Sir Rhys ap Thomas's conduct during the Simnel insurrection.

to the old possessions of the Prince of Snowdon, and few will now be found to deny that they were *ultra vires*. The domains of the Lords Marchers were untouched by them. It is difficult to estimate whether the “ancient counties” or the districts under the Lords Marchers were the most disturbed and distracted in the fifteenth century. In the previous century Dafydd ap Gwilym, and even Iolo Goch, who became the bard of Glyndwr, sang of a peaceful and industrious Wales. The rebellion of Glyndwr, the French Wars, and the Civil Wars that followed, had thrown the whole country into confusion and anarchy. The *History of the Gwydir Family* describes what took place in Carnarvon, which was “shire ground”. In the time of Henry VIII Bishop Rowland Lee complained that Cardigan and Merioneth, though shire-ground, were not less disturbed than the Marches. In the anarchy that prevailed each Lord Marcher had become a semi-independent kinglet, who maintained a large retinue of armed followers. A malefactor had only to fly over the border of his lordship to be welcomed with open arms by a neighbouring Lord Marcher. “The government and royall jurisdiction of ye said Lords Marchers (which was in most places executed most injuriouslie by bad partiall and covetous ministers) was found to be most noysome and rather a cause to urge ye subjects to rebell than to preserve and keep in quietness ye country people.”<sup>1</sup> In England, Henry VII dealt vigorously with great nobles who kept too many retainers. In Wales he did nothing. He allowed Rhys ap Thomas to become the most powerful man that South Wales had produced since the Lord Rhys. Sir Rhys’s whole force was always at the King’s command, whether it was to put down a pretender or to aid his sovereign over seas.

<sup>1</sup> *Description of Wales*, p. 20.

Henry VII never forgot that Wales was the most martial portion of his realm ; he tried to attach it to himself by appeals to its racial pride ; and “gave in chardge to his soone Prynce Henry that he showld have a spetiall care for the benefitt of his owne Nation and Countrymen the Welshmen”.<sup>1</sup>

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#### THE COURT OF THE COUNCIL OF THE MARCHES.

The first attempt to bring Wales into better order was made in the reign of Edward IV. True to the Yorkist policy of “governance”, Edward determined to establish a Court in the Marches of Wales which would put down lawlessness with a strong hand, and, by bringing near to the people something in the nature of a centralised government, help to remove some of the evils under which the land was groaning. That the people of Wales, then as now, were amenable to good government is apparent from the complaints of the bards who, martial though they were, showed that they were yearning for the dawn of better days. “*Ni fyn un dyn ofni Duw*”, “there is none that will fear God”, was the bitter complaint of Dafydd Llwyd ap Llewelyn. The story of the foundation of the Court of the Council of the Marches was sketched by Dr. Powel in his *History of Cambria* in 1584. Dr. Powel was in touch with Sir Henry Sidney and the other officials of the Court, and his account must have been derived from intimate contact with those that had made a study of its history. At all events it is certain that recent investigations have not materially corrected any statements made by the old historian, or added appreciably to our information.<sup>2</sup>

<sup>1</sup> George Owen's *Dialogue in Owen's Pembrokeshire*, Part iii, p. 39.

<sup>2</sup> The first attempt in recent times to investigate the story of “The Court of the President and Council of Wales and the Marches” was

“King Edward the Fourth”, said Powel—

“using much the faithfull service of the Welshmen meant the reformation of the estate of Wales, and the establishment of a court within that Principalitie, and therefore he sent the bishop of Worcester, and the Earle of Rivers, with the prince of Wales, to the contrie, to the end he might understand how to proceed in his proposed reformation. But the trowbles and disquietnesse of his owne subjects, and the shortness of his time sufficed him to doo little or nothing in that behalfe.”<sup>1</sup>

It is now ascertained that the Prince’s Court in the Marches was first constituted about the year 1471. But Edward IV does not appear to have done much more than establish the Court at Ludlow. Of real power the Court seems to have had little. The youth of the Prince, the novelty of the undertaking, and the indifference of the King, combined to make it of little importance in the “estate of Wales”.

Henry VII, like his predecessor, “using much the faithfull service of the Welshmen”, put into effect the design of the Yorkist king. In 1493 he sent Prince Arthur to hold his court at Ludlow, but it was only in 1501 that he began to develop his policy. In that year he sent a remarkable man, William Smyth, Bishop of Lincoln, to Ludlow as the first real Lord President of the Court of the Council of the Marches. “This Bushope”, said Gerard in his “Discourse” already cited, “is the first Lord President of Walles found in the Recordes,

made by the late Judge David Lewis, whose valuable paper appeared in volume xii of the *Cymmrodor Magazine*. This was supplemented by the extremely interesting “Further Notes” of Mr. Lleufer Thomas in the subsequent volume. Dr. Henry Owen’s “English Law in Wales and the Marches”, which has already been cited, (vol. xiv of the *Cymmrodor*), also dealt with the same subject. Still later, Miss Skele has dealt exhaustively with the whole history of the Court in her learned and careful work, entitled, *The Council in the Marches of Wales*.

<sup>1</sup> Powel’s *Historie of Cambria*, p. 389.

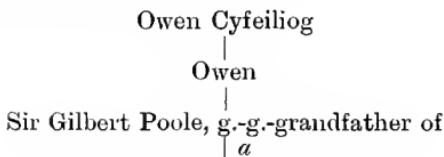
who was sent by Henry VII in the seventeenth year of his rayne to be Lord President of Prince Arthur's Counsaille in the Principalite of Walles and Marches of the same. And so continewed Lord President untill the 4th yare of Henry VIII. He was the founder of Brasenose College, Oxford."<sup>1</sup> The only record of the powers of the Council is to be found in Gerard's "Discourse".<sup>2</sup> "They had instructions geven them which was in effect to execute Justice vpon all felons and prayers of Cattell in thenglishe adjoyning Counties upon all felonies there or in any parte of Wales comitted, to suppresse and ponishe by ffyne and ymprisonment Rowtes, Riottes, vnlawfull assemblies, assaultes, affraies, extorc'ons, and exac'cons and to heare the complaints as well of all poor welshe personnes oppressed or wronged in any cause as to those enhabitinge in thenglisch Counties adjoyninge. They had auctoritie by Comission of Oyer and terminer and speciall gaole deliverie throughowte Wales and in those Englishe counties adjoyninge."

Dr. Powel adds that among "other wise and expert counsellors" the King appointed "Sir Richard Poole, his kinsman, which was his cheefe chamberlaine". Sir Richard Pole, the father of Cardinal Pole, was the lineal descendant of the Princes of Powys,<sup>3</sup> and would therefore

<sup>1</sup> His portrait is in the Hall of Brasenose, where he is described as "primus Wallie praeses".

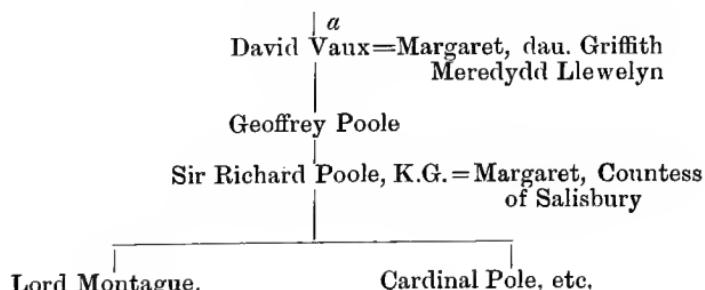
<sup>2</sup> *State Papers, Dom., Eliz.*, vol. 107, No. 21.

<sup>3</sup> As late as 1534 Martin de Cornoca reported that the whole of Wales was devoted to the house of Pole. *State Papers*, vol. vii, 1040. The genealogy of the Poles is thus given in the *Book of Golden Grove*, L 1647, now in the Record Office:—



have peculiar authority over the Welsh of Mid-Wales. Bishop Smith, true to Henry's policy of conciliating the Welsh, did not resort to coercive measures. He rather endeavoured to win the affection of his master's turbulent kinsmen by dispensing hospitality on a lavish scale at the Prince's Court, and by making the Welsh chiefs and the Lords Marchers feel that Arthur was not the representative of an alien authority, but was in reality the Prince of Wales. That his administration was at least partially successful is evident from the increasing loyalty of Wales. "And soe the Government of Wales was continued under y<sup>e</sup> Lords Marchers until y<sup>e</sup> time of Henry VII", wrote George Owen, "in whose time y<sup>e</sup> Welshmen willinglie submitted themselves in hart to his highness being paternallie of their auncient princes of y<sup>e</sup> British line, in such sort that they who in former times were termede soe disobedient to y<sup>e</sup> crowne of England (and against whom y<sup>e</sup> kings of England promulg'd such unnaturall and extreame lawes, as never did any prince did y<sup>e</sup> like against his subjects) grewe so quiett that King Henry VIII in his tyme did well perceave y<sup>t</sup> y<sup>e</sup> people and countrey of Wales might be governed by lawes as y<sup>e</sup> subjects of England, and not by thraldome and crueltye used by y<sup>e</sup> Lords Marchers."

George Owen, however, was speaking after the event. There were still many difficulties to be overcome, still many ghosts to be laid, before Wales was to be granted the boon



of equal treatment with England. With the death of Prince Arthur, in 1502, King Henry seems to have lost his interest in the Court of the Marches. Young Henry was created Prince of Wales in 1503, but he never visited Wales or held his Court in the Marches. Bishop Smith, however, remained at his post till Henry VII's death in 1509. He continued, nominally, as President till his own death in 1514, but the latter years of his life were almost entirely spent in his diocese of Lincoln.

There was no break of continuity in the tenure of the Presidency. Bishop Smith was succeeded by Bishop Blyth of Lichfield, and Bishop Vescie or Voysey of Exeter. Henry VIII, in spite of his father's "charge", up to 1525 had paid little attention to the affairs of Wales. He had never visited the country, the Statute Book was bare even of mention of the affairs of the Principality, the Court of Ludlow became a mere shadow and a name. The King during the first years of his reign seems to have been content with playing the royal part in the national pageant. As he was willing to allow his foreign and domestic policy to be directed by Wolsey, so he was content to allow "Father Rhys", as he familiarly called Sir Rhys ap Thomas, practically to rule South Wales. Sir Rhys not only held the enormous Dinevor estates, but he was Chief Justice and Chamberlain of South Wales. The rest of Wales and the Marches were administered in haphazard fashion as in the days of his father. As long as Sir Rhys lived, the power of the Court of Ludlow over South Wales was of the most shadowy character. But in 1525 Sir Rhys ap Thomas died, and with him died the old *régime*. There is nothing so remarkable in the history of Henry VIII as the growth of his mind, of his power, and of his statesmanlike vigor, almost every year after the first dozen joyous, careless years of his reign. It was, no doubt,

the death of Sir Rhys that first directed his attention to Wales. He probably knew but little of the internal condition of the country. There are no records in the earlier *State Papers* of his reign dealing with the Principality. But by 1525 the masterful and jealous character of the King had begun to assert itself. Several years after, Sir Thomas More addressed a prophetic warning to Cromwell about the character of the master from whose service More was then retiring. "Master Cromwell", he said, "you are now entered into the service of a most noble, wise, and liberal prince; if you will follow my poor advice, you shall in your counsel-giving to his Grace ever tell him what he ought to do, but never what he is able to do. For if a lion knew his own strength, hard were it for any man to rule him."<sup>1</sup> Ever since the fall of Buckingham, Henry was learning what he could do. He realised that a despot must ever cut the heads of the tallest poppies. Wolsey he trusted fully almost to his death; More at one time he loved. All that we know of his bearing towards Sir Rhys ap Thomas goes to show that he looked upon him as a faithful and necessary minister for the government of Wales. But, with Sir Rhys's death, Henry's strong, vigorous mind began to address itself to the question of Wales. His first act was characteristic. He refused to continue Sir Rhys's grandson—a young man who was married to a daughter of the Duke of Norfolk—in his offices, but appointed Lord Ferrers of Chartley, afterwards the first Viscount Hereford, as his successor. He paid a visit in person to Ludlow, accompanied by his daughter Mary, who was unofficially styled the Princess of Wales. At Ludlow Mary remained till 1528, when she was recalled in disgrace owing to the King's divorce proceedings against

<sup>1</sup> Rooper, *Life of Sir T. More* (ed. 1729), p. 69.

her ill-fated mother, Catherine of Arragon. It may be that the King's only intention in and after 1525 was to curb the overweening power of the Dinevor family. But there is one reference in the *State Papers* which suggests that already, after the installation of the Princess Mary at Ludlow, the King was forming other and greater designs. In a letter dated 9 January 1526, Lord Ferrers wrote to the Lord President of the Council at Ludlow, that—

"When his Lordship was first admitted Lord President of the Princess's Council, my Lord Legate (Wolsey) instructed the writer and others of that Council that no subpoenaes should be directed into Wales or the Marches, but every cause be first tried before the stewards and officers there, the appeal to lie afterwards to his Lordship and other Commissioners. Subpoenaes are now served in Carmarthen and Cardigan, in spite of the proclamations, the like of which was never seen before."

The writer concludes: "And now both shires saith plainly that they will not pay one groat at this present Candlemas next coming, nor never after, if any man do appear otherwise than they have been accumed, but they had liever ryn into the woods."<sup>1</sup>

It would be interesting to know more of the circumstances attending this complaint. No reference is to be found to it later, and it would therefore seem that a stop was put to the attempt of the Ludlow Court to exercise original jurisdiction over the old counties and the marches of Wales. But the fact that the attempt was made, soon after the King's visit to Ludlow, is, perhaps, indicative of the ulterior object which the King had even then vaguely formed, but which was only destined to bring forth fruit after many days. Lord Ferrers was not only Chamberlain of South Wales, he was also a great Lord Marcher, and his letter breathes a spirit of jealousy of the Ludlow

<sup>1</sup> *State Papers*, Henry VIII.

Court's interference in the Marches as well as in the Counties of Carmarthen and Cardigan. If Henry had formed any such design, he was constrained by the rapid course of great events in England to forego it for the time. After the little flash of energy displayed in 1526, the Court of the Marches sank once more into lethargy. In 1528, when the uncertain position of the Princess Mary had no doubt affected the authority of her Council, a petition was sent to Ludlow by the bailiff and burgesses of Brecon complaining that justice was not kept, that the King's tenants were impoverished, and his revenues decayed. The reply of the Council, while it indicates that the state of things was better than it had been, did not attempt to deny the facts mentioned in the petition.

With the insurrection of Rhys ap Griffith at Carmarthen, in 1529, it is not proposed to deal here.<sup>1</sup> The story is long and complicated. It served to bring home to the King the disorderly condition of the Principality. It shewed, too, that the Council of Ludlow was too weak to deal with such cases of turbulence. Lord Ferrers, as a Lord Marcher, may have disliked to enhance the reputation of the Council. It is certain at least that, for whatever reason, the young chief was sent to answer for his misdemeanours before the Star Chamber in London. That the Council at Ludlow continued to be impotent in the face of the growing anarchy in Wales is shown by a letter of one Thomas Phillips to Cromwell, in 1531. It is interesting because, with the exception of the letters concerning Rhys ap Griffith's insurrections, it is the first intimation the English Government had of the real state of things in Wales. In it he pleads that such a Council be established in the Marches, that the best officer in

<sup>1</sup> For an account of Rhys ap Griffith's "affray", see the writer's article in *I' Cymroddor*, vol. xvi.

Wales should quake if found in default.<sup>1</sup> A still more important letter, because it pointed out one of the defects of the existing system, was sent to Cromwell, in 1533, by Sir Edward Croft, an official of the Council, and Vice-Chamberlain of South Wales. Wales, he said, was "far out of order", and many murders in Oswestry and Powys had gone unpunished, because the President, being a cleric, had no power to inflict the penalty of death. He wished "some man to be sent down to us to use the sword of justice where he shall see cause, throughout the Principality. Otherwise the Welsh will wax so wild, it will not be easy to bring them to order again."<sup>2</sup> In the same year Thomas Croft wrote that "more than a hundred have been slain in the Marches of Wales since the Bishop of Exeter was President there, and not one of them punished".<sup>3</sup>

The prayers of Phillips and of the Crofts were speedily answered. In 1534 a man was sent to succeed the Bishop of Exeter as Lord President of the Council, who left the stamp of his personality upon it and its work, and who made the terror of his name felt through all the Marches of Wales. Rowland Lee, Bishop of Lichfield, only held the office of President for nine years, no long period in the life of a nation, but so dominant was his character and so unresting his energy that he will ever be regarded as the most famous in the list of Presidents, and as the administrator who left an abiding impress on the history of Wales. Gerard, in his second "Discourse", describes him as "stowte of nature, readie witted, rougue in speeche, not affable to any of the walshrie, an extreme severe ponisher of offenders, desirous to gayne (as he did in deede) credit with the king and comendac'on for his service".<sup>4</sup> Froude states that he was "the last survivor of

<sup>1</sup> *State Papers*, Henry VIII, vol. v, 991.

<sup>2</sup> *Ibid.*, vol. vi, 210.

<sup>3</sup> *Ibid.*, 946.

<sup>4</sup> *State Papers, Dom.*, Eliz., vol. 107, No. 10.

the old martial prelates, fitter for harness than for bishop's robes, for a court of justice than a court of theology, more at home at the head of his troopers chasing cattle-stealers in the gorges of Llangollen than hunting heretics to the stake, or chasing formulas in the arduous defiles of controversy".<sup>1</sup> He had come to the fore as Henry's agent in the divorce controversy and in the suppression of the smaller monasteries. It was believed that it was he that performed the marriage ceremony between the King and Anne Boleyn. Though he took the King's side against the Pope, he was far removed from Protestantism. One of Cromwell's correspondents calls him "an earthly beast, a mole, and an enemy to all godly learning into the office of his damnation—a papist, an idolater, and a fleshly priest".<sup>2</sup> The stout Bishop laid no claim to superior sanctity, or even to any rigid, ceremonious observance of the duties of his ecclesiastical position. "I was never hitherto in the pulpit", he wrote to Cromwell as late as 1534. But if he neglected his diocese and his priestly functions, he spent the revenues of his see in carrying out the duties of his secular office. He was not deterred by the old canonical rule that a cleric should not shed blood. His extant letters to Cromwell, giving authentic information to the government, betray his qualities and their defects. His breezy personality, after the course of nearly four centuries, lives in and through them. He is thoroughly human, especially in his love for open-air sport. We find him sending to his patron a present of partridges, doubtless the prize of his own skill. In one letter he records that he has "just killed a great buck". In another he begs Cromwell to send to him "a warrant for a stag in the forest of Wyer".

<sup>1</sup> *History of England*, vol. iii, 229.

<sup>2</sup> *State Papers*, Hen. VIII.

Rowland Lee soon set to show the robbers and thieves of the borders that he was not afraid to inflict the death penalty. In July 1534 we find him writing:—

“The Walshe above Schroyisbury be very besy, and as I am informed doo bryne divers howses and doo grett disspeles whiche cannot be withowte the consente of sum hedes, whose hedes if I may knewe justly the trenges I shall make ake and folew your preceptes, not thayreof to fayle, god beyng my good lorde.”<sup>1</sup>

By the following year he was able to report that the “Welshmen of Shrewsbury” had been brought “into a reasonable staye touching such robberyes and other malefacs as were there used”, and that he had “hanged four of the best blood in the county of Shropshire”.<sup>2</sup> In December 1535 his activities ranged from Presteign and Hereford to Chepstow and Monmouth. In the following month he describes with great gusto the hanging of thieves at Ludlow on market day. “If he (*i.e.* the thief) be taken, he playeth his pageant.” He feels that his stern policy of repression has made him a marked man, but he does not shrink from the dangers attendant upon his position. “Although the thieves have hangid me by imaginacion, yet I truste to be even with them shorteley in very dede.” In June 1536 he was in Montgomeryshire, where was gathered together “a certain cluster or company of thieves and murderers” whom he was resolved to put down. No doubt the rigour of his administration and the summariness of his methods have been exaggerated, both by contemporaries and by posterity. But the times were rude, and justice was at best but roughly administered. We may discount, with Froude, the statement that seventy-two thousand malefactors suffered the extreme penalty of the law in the reign of Henry VIII, but even so careful a

<sup>1</sup> *State Papers*, Hen. VIII, vol. vii, No. 940.

<sup>2</sup> Nov. 6, 1535: *State Papers*, vol. vii, p. 529, No. 1393.

writer as Stubbs speaks of Henry's "holocausts" of victims.<sup>1</sup> Similarly we may discredit the loose statement of Ellis Griffith, a contemporary soldier, who wrote an account of his own times, that under the Bishop's rule five thousand men were hanged in the Marches of Wales within the space of six years.<sup>2</sup> When one remembers that the population of Wales was only about one-sixteenth of that of England, and that these victimis were said to have fallen in less than a sixth of Henry's reign, the proportion of Welsh malefactors becomes incredible. None the less, it is perfectly evident that thieves and murderers were hanged in batches, without regard to persons, and without very much respect for the forms of law. Lee was enjoined by Cromwell that "indifferent justice must be ministered to poor and rich according to their demerits". This injunction he faithfully obeyed, and for the first time since the death of Llewelyn the law began to be respected in Wales and the Marches. Gerard, in his "Discourse", written thirty-two years after the Bishop's death, gives unstinted praise to his administration :—

"They spent their holle tyme in travellinge yeerlie eythr throughre Wales or a great parte of the same in causes towchinge Civill government, and by that travell knewe the people and founde theire disposicon, favored and preferred to auctoritie and office in theire countreys suche howe meane of lyvinge soever they were, as they founde diligente and willinge to serve in discoveringe and tryinge owte of offences and offendors. Theye likewise deforced and discountenanced others, of howe greate callinge and possessions soever they were, beinge of contrarie disposicon. This stoute bushoppes dealinge and the terror that the vertue of learninge workethe

<sup>1</sup> Stubbs's *Med. and Mod. History*, p. 304.

<sup>2</sup> Dr. Gwenogvryn Evans, in his Introduction (p. x) to the Mostyn MSS., published by the Historical MSS. Commission, gives this among other tempting extracts from the writings of the *Soldier of Calais*. It is a pity that at least the portion dealing with contemporary events is not published and translated.

in the subiecte when he perceiveth that he is governed under a lerned magistrate, within iij or iiij yeres generallie so terrified theyme, as the verie feare of punishment rather than the desire or love that the people hadd to chaunge their walshrie wroughte first in theym the obedience theye nowe bee grown into. Then was this Counsell and theire proceedinges as moche feared, reverenced and hadd in estimacion of the walshrie as at this daye the Starre Chamber of the English."<sup>1</sup>

Without subscribing to every word of this eulogy of the Bishop and his co-adjutors—putting a good deal of it down to the natural tendency of the official to magnify his office or the institution to which he belongs, and the attraction which anything in the shape of “strong and resolute government” has for a certain type of mind—it bears witness to the indelible mark left by Rowland Lee on the administration of Wales. Firm government, rigorous administration of justice, and absolute fearlessness in enforcing law and order were indispensable to Wales of that period ; and those boons she obtained from Rowland Lee.

The condition of Wales, or of those parts of Wales visited by him, as described by the Lord President in his letters to Cromwell, was deplorable. In a letter, written in the first year of his presidency, he gives a graphic illustration of the state of the country. In the lordship of Magor alone there were at the time living unpunished, under the protection of Sir Walter Herbert, five malefactors who had committed wilful murder, eighteen who had committed murder, and twenty thieves and outlaws who had committed every variety of crime.<sup>2</sup> The evils of *Arthel* and *Commortha* were rife. Both customs had an honest and legitimate origin. They had become more than a peril to the state ; they were a

<sup>1</sup> *State Papers, Dom., Eliz.*, vol. 107, No. 10.

<sup>2</sup> Wright's *History of Ludlow*, 383.

festered sore in the body politic. To *Arthel* or *Arddel* a man was to vouch or become surety for him or for his good behaviour. It was a recognised and indeed highly necessary procedure under the laws of Howel Dda.<sup>1</sup> It gradually grew to be a gross abuse. The Lords Marchers “avouched” murderers and outlaws, and so surrounded themselves with a bodyguard of lawless ruffians. So deeply-rooted and wide-spread was this evil that even the new Lord President found it impossible to eradicate it without having recourse to legislation. Section 13 of 26 Henry VIII, c. 6, which was passed in 1534, soon after Rowland Lee came to the Marches, was doubtless enacted owing to the representations of the Bishop.

“And where heretofore upon divers Murthers, Robberies and Felonies perpetrated and done, as well within the Lordships Marchers of Wales as in other places in Wales without the same Lordships, the offenders divers Times flee and escape from the same Lordship or other Place where such offence was committed, and have repaired and resorted into another Lordship Marcher, and there by the aid Comfort and Favour of the said Lord of the same Lordship, or his Officer or Officers, have been abiding and resiant, into which Lordships the same Lords Marchers have and do pretend a Custom and Privilege that none of the King’s Ministers . . . . may enter to pursue apprehend and attach any such offender,”

it is enacted that the officers of the Council of the Marches shall have authority to follow the offender and bring him back to the jurisdiction of the lord where the offence was committed.<sup>2</sup>

The practice of Commortha (*cymhorth*=help) had its origin in the practice of co-aration—a custom which has to some extent survived even to our own times in rural Wales. “*Cymmorthas* are assemblies of people to

<sup>1</sup> Wade Evans, *Welsh Mediaeval Law*, at pp. 88, 234, and 325; Owen’s *Ancient Laws of Wales*, pp. 935-6.

<sup>2</sup> Bowen’s *Statutes of Wales*, p. 62.

assist a neighbour in any work.”<sup>1</sup> It was easy for the lawless Lords Marchers to take advantage of the old custom to further their own interests, or to make it a cloak to conceal an illegal assembly, or, sometimes, to extort an illegal exaction. So great had the evil become that by section 6 of the Statute already referred to it was enacted

“that no person or persons from henceforth, without licence of the said Comm<sup>n</sup>rs in writing, shall within Wales or the Marches of the same, or in any Shires adjoining to the same, require, procure, gather, or levy any Commorth, Bydale, Tenant’s Ale, or other Collection or Exaction of Goods, Chattels, Money, or any other Thing, under colour of marrying, or suffering of their Children saying or singing their first Masses or Gospels, of any Priests or Clerks, or for Redemption of any Murther, or any other Felony, or for any other Manner of Cause, by what Name or Names soever they shall be called . . . . . and that no Person or Persons shall hereafter at any Time cast any Thing into any Court within Wales, or in the Lordships Marchers of the same, by the Mean or Name of an Arthel, by Reason whereof the Court may be letted, disturbed, or discontinued for that Time, upon Pain of one whole year’s imprisonment.”

In spite of this statutory prohibition, so inveterate was the custom,<sup>2</sup> that one George Matthew of Glamorgan obtained, in 1536, greatly to the Lord President’s annoyance, the King’s licence to hold *Commortha*. “He is so befriended”, commented Lee in a letter to Cromwell, “that it will run through all Wales to his advantage to the amount of one hundred marks.”

We find echoes, too, in Lee’s letters of the vendetta, which Sir John Wynne described in fuller detail in his *History of the Gwydir Family*, between the Trevors and

<sup>1</sup> Pennant’s *Tour in Wales*, iii, 353. There was one exception in the Statute to the prohibition of *commortha*, viz., in the case of the loss of property by fire.

<sup>2</sup> Though it was forbidden to gather a *Commorth* “under colour of marrying”, it is curious to find that the practice (under the name of “taith” or “neithior”) has survived down to our own days.

Kyffins of Oswestry. John Trevor was summoned before the Council for assisting to burn a man's house in Chirkland. Through negligence, or worse, he contrived to escape. He fled "to the wood" with an outlaw named Robert ap Morice. Lee begs Cromwell to see that no pardon is made out to them.<sup>1</sup>

The abduction of heiresses, which is always a sign of social anarchy, was not uncommon, and was tolerated by public opinion.<sup>2</sup> Bishop Lee gives an account of the abduction of a widow named Joan ap Hoell from the church at Llanwarne by one Roger Morgan. In the following month the abductor was tried before a jury at Gloucester, and, to the Bishop's intense chagrin, was acquitted.<sup>3</sup> "When it came to the trial of the Morgans", wrote Lee to Cromwell, "the rest of the gentlemen could not be found in the town by the sheriff, so were fain to take such as remained, who against the evidence acquitted the Morgans . . . Mr. Justice Porte will confess the premises to be true, as I willed him and his associate at the assizes, Mr. Montague, to cess good fines upon the gentlemen that departed of their disobedience."<sup>4</sup> The unwillingness or fear of juries to do their duty honestly in such trials was notorious. "Though at the late Assizes [at Chester] many bills, well supported, were put into the 'greate enqueste' [grand jury], yet contrary to their duty they have found murders to be manslaughters and riots to be misbehaviours."<sup>5</sup> The Bishop promptly committed the grand jury to prison "for their lightness". He added, to

<sup>1</sup> *State Papers, Henry VIII*, vol. x, 453.

<sup>2</sup> "This is a vice common to Wales, and for its reformation we caused the trial to be made, but all the honest persons we had appointed absented themselves." Lee to Cromwell, 28 February 1538.

<sup>3</sup> *State Papers, Henry VIII*, vol. xiii, Pt. i, p. 128, No. 37.

<sup>4</sup> Lee to Cromwell, *Ibid.*, vol. xiii, Pt. i, 371.

<sup>5</sup> *State Papers*, vol. xiii, Pt. i, 1411.

defend himself against a possible charge of harshness, that if the country was to be kept in order, punishment must be inflicted, for by the common law things so far out of order could never be redressed.

Another story, which is given in some detail in the *State Papers*, presents a vivid illustration of the condition of Wales at the time. It relates to a scapegrace scion of a great Norman-Welsh family, Robert Stradling of Glamorganshire. His confession, taken at Bewdley on 28 September 1535, is thus summarised :—

“About two years ago took part with his father-in-law, Watkyn Louther, who disputed certain lands with Charles Turbill. Confesses to having kept one Lewes of North Wales and one Griffith of Caermarthenshire, who robbed and murdered Piers Dere, for five or six weeks in his house, and they gave him one royal of Dere's. Killed Gitto Jenkyn, who quarrelled with him while coursing at the White Crosse, on the said lands in variance. Was outlawed, and to escape the search, boarded with six persons a balingar of Pastowe in the haven near the Abbey of Neath, and made the mariners put to sea for three weeks. Did no harm to anyone. Landed at Milford Haven, and went to Waterford in the latter end of April. Hearing that proclamations were made in Wales against him returned.”<sup>1</sup>

Lee was no believer in any policy but that of repression. The common law was insufficient, and exceptional measures had to be taken. “If one thief shall try another, all we have begun is foredone.”<sup>2</sup> He tells with glee how he hanged a dead thief on a gallows for a warning, and how three hundred people followed to see the carriage of the thief in a sack, “the manner whereof had not been before”. “All thieves in Wales quake for fear, and there is but one thief, of name Hugh Durant, whom we trust to have

<sup>1</sup> *State Papers*, Henry VIII, vol. ix, 465. In the end Lee recommended him for the King's pardon, because he was “a proper man and a good archer and willing to pay a reasonable fine”. *Ibid.*, ix, 126, 150.

<sup>2</sup> *Ibid.*, x, 454; 12 March 1536.

shortly. Wales is brought to that state that one thief taketh another, and one cow keepeth another, as Lewis my servant shall inform you."<sup>1</sup> Holding such views of the inadequacy of the ordinary law, and of the necessity of stern and repressive administration, unhampered by the limitations of the common law, the Lord President cannot be regarded as the inspirer, or even a supporter, of the legislation of 1535 and 1542. The spirit and policy of the Bishop are reflected rather in the legislation of 1534, which strengthened the arm of the government in the repression of crime, and enlarged its powers to maintain law and order. It is beyond question that the Bishop had no hand in any constructive legislation which had for its object the association of the people of Wales with the government of their country.

By 26 Henry VIII, c. 4, it was enacted that as

"Divers adherents friends and kinsfolk to murderers and felons have resorted to jurors, and have suborned them to acquit divers murderers felons and accessories openly and notoriously known, contrary to equity and justice,"

power should be vested in the Lord President to send the recalcitrant jurors to prison<sup>2</sup>—a power which Bishop Lee was prompt to use, as we have seen, four years later at Chester. By another enactment of the same year (26 Henry VIII, c. 6, s. 6) the Justices of Gaol Delivery and of the Peace in any English shire next to the district in Wales where a crime had been committed were empowered to try and punish the offender.<sup>3</sup>

Lee, so far from wishing to extend the common law of England to Wales, was rather disposed, as has already been seen, to suspend it altogether. Ellis Griffith expressly states that the Statute, 26 Henry VIII, c. 6, was

<sup>1</sup> *State Papers*, x, 31.    <sup>2</sup> Bowen's *Statutes of Wales*, 58.    <sup>3</sup> *Ibid.*, 51-2.

passed at the instigation of Bishop Rowland. Its preamble describes, in sonorous English, the condition of Wales as viewed by him :—

“Forasmuch as the People of Wales and the Marches of the same, not dreading the good and wholesome Laws and Statutes of this Realm, have of longtime continued and persevered in Perpetration and Commission of divers and manifold Thefts, Murthers, Rebellions, Wilful Burnings of Houses and other scelerous Deeds and abominable Malefacts, to the high Displeasure of God, Inquietation of the King's well-disposed Subjects, and Disturbance of the Public Weal, which Malefacts and scelerous Deeds be so rooted and fixed in the same people, that they be not like to cease, unless some sharp Correction and Punishment for Redress and Amputation of the Premisses be provided, according to the demerits of the Offenders,”<sup>1</sup>

it is therefore enacted that all persons, when duly summoned, should appear at the courts within the Lordships Marchers upon penalty of a fine; if any officers in the Lordships Marchers illegally imprisoned any person, the Council of the Marches should have power to levy a fine of not less than 6*s.* 8*d.* for every day of wrongful imprisonment; no weapons should be brought within two miles of any court, fair, town, church, or other assembly; no person, without the licence of the Council, should levy *commorth*, etc.; *arthel* should be discontinued; felonies committed in Wales should be triable in the next adjoining English county; and the officers of all Lordships Marchers should aid in securing culprits fleeing from one lordship to another upon penalty of a fine.

Another enactment of the same year throws a significant light on the unruly condition of the Welsh Border. By 28 Henry VIII, c. 11, Welshmen were punished for attempting any assaults or affrays upon the inhabitants of Herefordshire, Shropshire, or Gloucestershire, who had been “beaten, mayhemed, grievously wounded, and some-

<sup>1</sup> Bowen's *Statutes of Wales*, pp. 54-62.

times murdered", by one year's imprisonment "without redemption".<sup>1</sup>

So far we may conclude, even if we had not the positive contemporary evidence of Ellis Griffith to the same effect, that the legislation relating to Wales was due to the initiative of the new Lord President. It was designed to deal directly and practically with the state of lawless anarchy which prevailed in Wales and the Marches. Its only object was to repress crime, and to punish offenders against the law. It showed no gleam of recognition of the fact that the condition of Wales was due to any other cause than the inherent viciousness of its inhabitants. "malefacts and scelerous deeds" were so "rooted and fixed" in the people that only the most vigorous discipline could eradicate the evil. The laws to which Wales was subject were "good and wholesome", and all that was required was their more effective administration. Such, therefore, we may take it, was the policy of Bishop Rowland Lee, a strong man, a resolute administrator, imbued with a contemptuous pity for the "Welshery", honestly desirous of dragooning them into a better conduct and condition, but a ruler who lacked the higher qualities of statesmanship, not endowed with sufficient imagination to penetrate into the root and origin of the evils under which the country was suffering, or to "know what shall chance in time coming", and bereft of that sympathy with the subject people without which even justice loses all its healing grace.

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#### GRANT OF A CONSTITUTION.

In 1535 we notice a new spirit animating the policy of the English Government in Wales, a spirit wholly alien to the rough, practical, and unimaginative temper of the

<sup>1</sup> Bowen's *Statutes of Wales*, p. 63.

Lord President. Henceforward, in the legislation dealing with Wales there are evidences of a larger grasp, a more daring statesmanship, a more adventurous spirit to "make or mar". The first Act of 1535 (27 Henry VIII, c. 5) empowered the Lord Chancellor to appoint Justices of the Peace for the eight ancient counties of the Principality. The justices were authorised to hold their sessions and the sheriffs to execute their processes. At first blush this would appear to be only the characteristic Tudor remedy for the "indifferent ministration" of justice, but in reality it constituted a very real and even daring advance. To allow the law to be administered by Justices of the Peace was to allow it to be administered by men of Welsh descent and of Welsh sympathies. Up to that time, as George Owen points out, there was hardly a single Welshman entrusted with authority in Wales. The "men on the spot" were filled with dismal forebodings as to the result that would ensue from the Government's rash proceedings. It may be that Bishop Rowland Lee was not consulted by the Government as to the administration of the law in the eight ancient counties, but he had an opportunity in 1536 of expressing his views as to the competence of the "Welshery" to be associated with the government of their own country. In that year John Scudamore, Sheriff of Hereford, wanted to know if he was to consider as shire-ground certain Marches of Wales annexed to his shire.<sup>1</sup> Scudamore, however, was suspect. He was a descendant of Owen Glyndwr, and was "dwelling nigh the Welshery and kynned and alyd in the same". So far from trusting the Sheriff, Lee asked Cromwell that Scudamore should be put out of the commission.<sup>2</sup> "There are", the Lord President gravely informed the Secretary of State, "very few Welsh in Wales above Brecknock who have £10 in land,

<sup>1</sup> *State Papers*, Henry VIII, vol. xii, 1338.

<sup>2</sup> *Ibid.*, xi, 1255.

and their discretion is less than their land." By this time still further changes were in the air. The Act of 1535 had decreed that the rest of what is now called Wales should be turned into shire-ground. The good Bishop is full of gloomy predictions as to "the bearing of thieves" if the Statute goes forward. Cardigan and Merioneth, he points out, are as disorderly as the worst parts of Wales, although they are shire-ground.<sup>1</sup> Even in the ancient counties themselves the Government's decision to appoint justices of the peace was viewed with dismay. Among the State Papers there is to be found a document entitled: "Articles proving that it shall be hurtful to the commonwealth of the three shires in North Wales, viz., Anglesey, Carnarvon, and Merioneth, to have justices of the peace therein." The justices will be dangerous, partiality will increase, the inhabitants are poor and quarrelsome, and most of the gentlemen are "bearers of thieves and misruled persons".<sup>2</sup> Sir Richard Bulkeley, of Anglesey, was of the same opinion, and begged Cromwell to stop the Lord Chancellor from appointing any Justices of the Peace within the three shires of North Wales.

The second Act of 1535 (27 Henry VIII, c. 7) abolished all the old cruel and barbarous forest customs, which enabled the Lords Marchers to punish persons who were travelling through a forest without a token, and without being "yearly tributors", with a "grievous fine or reward", and if twenty-four feet out of the highway, with forfeiture of their money or the loss of one of their hands.<sup>3</sup>

The preamble to the "Act for making of Justices of Peace in Wales" (27 Henry VIII, c. 5) stated that it was passed "to the intent that one Order of ministering of his Laws should be had observed and used in the same as in

<sup>1</sup> *State Papers*, x, 453.

<sup>2</sup> *Ibid.*, xi, 525.

<sup>3</sup> Bowen's *Statutes of Wales*, pp. 69-72.

other places of this Realm of England is had and used". Henceforth that was the aim of English statesmanship. Henry VIII and his ministers had a wholesome belief in the merits of English institutions. They had come to the conclusion that what was good for England was also good for Wales. They refused to credit "the Welshery" with a double dose of original sin. Shortsighted administrators and timorous officials warned them in vain of the folly of applying institutions, which might work well in orderly and civilised England, to a disturbed and lawless country like Wales. They refused to believe that Welsh gentlemen, when entrusted with the powers of Justices of the Peace, would prove more corrupt, more partial, or more negligent than their fellows in England. They showed a robust faith even in Welsh juries, in spite of Rowland Lee's sardonic comment that to set a Welshman to judge a Welshman was to set a thief to try a thief. At a time when the Lord President was only at the beginning of his task of repression, when courier after courier brought news of the disorderly and anarchical condition of the Principality, and when every official was calling for a more rigorous administration of the existing law, the English Parliament passed one of the most liberal and the most courageous Act which has ever been laid to the credit of the British legislature. 27 Hen. VIII, c. 26, which finally incorporated Wales with England, is described as "An Act for Laws and justice to be ministered in Wales in like form as it is in this Realm". The preamble ran as follows :—

"Albeit the Dominion Principality and Country of Wales justly and righteously is, and ever hath been incorporated annexed united and subject to and under the Imperial Crown of this Realm as a very Member and Joint of the same, whereof the King's most Royal Majesty of Meer Droit, and very Right, is very Head King Lord and Ruler; yet notwithstanding

because that in the same Country, Principality, and Dominion divers Rights Usages Laws and Customs be far discrepant from the Laws and Customs of this Realm, and also because that the People of the same Dominion have and do daily use a speech nothing like, nor consonant to the natural Mother Tongue used within this Realm, some rude and ignorant People have made distinction and Diversity between the King's Subjects of this Realm, and his Subjects of the said Dominion and Principality of Wales, whereby great Discord Variance Division Murmur and Sedition hath grown between his said Subjects. His Highness therefore of a singular Zeal Love and Favour that he beareth towards his Subjects of his said Dominion of Wales, minding and intending to reduce them to the perfect Order Notice and Knowledge of his Laws of this his Realm, and utterly to extirp all and singular the sinister Usages and Customs differing from the same, and to bring the said Subjects of this his Realm and of his said Dominion of Wales to an amicable Concord and Unity, hath . . . . . ordained, enacted, and established"

that Wales should be henceforth "incorporated united and annexed" to England, and that all natives of Wales should enjoy and inherit "all and singular Freedoms Liberties Rights Privileges and Laws" of his subjects.

All laws, including the law of inheritance, "without division or partition", were to be henceforth after the form of England.<sup>1</sup> Forty-four of the Lordships Marcher were united to English shires; certain others were united to the existing Welsh shires; still others were to be "severed and divided into certain particular counties or

<sup>1</sup> This provision of p. 2 seems to be inconsistent with that of s. 35, which enacted that lands "to be departed and departable among issues and heirs male shall still so continue". "The intention evidently was", says Mr. Ivor Bowen in the Introduction to the *Statutes of Wales*, at p. 59, "that persons who retired upon any right under the ancient Welsh system of tenure were called upon to prove that it existed before the time of legal memory. The apparent variance was, however, remedied by the complete abolition of Welsh customs and rules of descent in 1542." But even after 1542 the Welsh custom of inheritance died hard. (See, e.g., 7 and 8 Will. III, c. 38.)

shires", which were then for the first time created, viz.: Monmouth, Brecknock, Radnor, Montgomery, and Denbigh. The boundaries of certain of the Welsh and Border counties were altered, and the Lord Chancellor was empowered to appoint Justices of the Peace for the four newly-created Welsh counties. The Justices and all officials were to use only English in discharging their duties, upon pain of forfeiting their offices.

"No Person or Persons that use the Welsh Speech or Language shall have or enjoy any Manner Office or Fees within this Realm of England Wales or other the King's Dominion, upon pain of forfeiting the same Offices or Fees, unless he or they use and exercise the English Speech or Language."<sup>1</sup>

The Lord Chancellor was authorised to appoint Commissioners to divide the shires of Carmarthen, Pembroke, Cardigan, Monmouth, Brecknock, Radnor, Montgomery,

<sup>1</sup> Though s. 20 has never been abolished, and it would therefore appear to be illegal to conduct proceedings in a law court in Welsh, it has, perhaps, never been rigorously enforced, and of late years it has become practically obsolete. Of one Edward Davies, Gerard wrote to Walsingham, in 1575: "He hath been the Queen's Attorney in the marches and is well learned and can speke the Welche Tonge, but no Welche man. Note that it were verie conveniente that one of the Justices of assizes did understande the Welche tongue, for now the justice of assise must vse some interpreter. And therefore many tymes the evidence is tolde according to the mynde of the Interpreter whereby the evidence is expounded contrarie to that w<sup>ch</sup> is saide by the examynate, and so the Judge gyteth a wronge charge." The practical "convenience" of a Judge being acquainted with Welsh has long been recognised in the appointment of County Court Judges in Wales. The present writer has, on more than one occasion, examined and cross-examined witnesses in Welsh without the intervention of an interpreter, and Mr. Justice Phillimore once invited counsel to address a jury at Lampeter in Welsh—an invitation which was, however, declined. The one real grievance which Welsh litigants labour under at present is that they have to pay the interpreter's fee for translating their evidence into English. Such a charge should surely be borne by the State.

Glamorgan, and Denbigh into hundreds, and another Commission to inquire “all and singular Laws, Usages and Customs used within the same Dominion and Country of Wales”, and such as may be thought by the King and Council “requisite and necessary” should remain.<sup>1</sup> For the first time Parliamentary representation was given to Wales<sup>2</sup>—one knight to sit for each of the shires, except Monmouth, which had two representatives, and one burgess for each shire town, except the shire town of Merioneth, which was exempted from the privilege. “Such fees as other Knights and Burgesses of the Parliament have been allowed” were to be paid to the new members; so that the representatives of Wales are the only members of Parliament for whose payment express statutory provision has been made.<sup>3</sup> The rights and privileges of the Lords Marchers were swept away, except that they were to continue to hold Courts Baron, Courts Leet, and Law-days, and to retain certain privileges, such as treasure-trove.

With the usual confidence of Tudor Parliaments in the sovereign, power was granted to the King for three years after the dissolution of Parliament to suspend or repeal the Act. It is a tribute to the success of the Act that the King never used the authority entrusted to him by Parliament. As has already been seen, neither good Bishop Lee, nor the other officials, were greatly enamoured of the liberal policy embodied in the Act, and they advised the King to postpone the appointment of Justices of the Peace. But, as far as is known, not even the Lord

<sup>1</sup> No records of these Commissions are extant, though s. 3 of the Act of 1542 would seem to imply that, at least, the first set of Commissioners did their work.

<sup>2</sup> Except in two of Edward II's Parliaments, in 1322 and 1327.

<sup>3</sup> By 35 Henry VIII, c. 11, provision was made for the payment of 4s. to every knight of the shire, and 2s. a day “unto every Citizen Burgess” from Wales by the Sheriffs and Mayors.

President went to the length of advising the King to repeal the Act. In the following year (1536) a short Act was passed giving power to the King during the next three years to determine the limits of the Welsh shires, and to name the shire towns (28 Henry VIII, c. 3). For some reason or other—partly no doubt owing to the lack of sympathy with the policy felt and expressed by Bishop Lee and the other officials—it was found impossible to get the work done within the prescribed time. In 1539 it was found necessary to extend the time for another three years (31 Henry VIII, c. 11), and it was only in 1542 that the last of the three Acts which created modern Wales was passed.

34 and 35 Henry VIII, c. 26, “An Act for certain ordinances in the King’s Dominion and Principality of Wales,” marked the passing away of the old order and the old school of statesmanship. It did away, finally and completely, with the Lordships Marchers, and with the abuses which were associated with their existence. It gave to Wales the geographical limits which she still retains, and if the institutions which it called into being have now disappeared, they existed, one for a century and a half, and another for well-nigh three centuries, and left an indelible impress on the development of the Welsh people. It made the “resolute Government” of Bishop Lee unnecessary and anomalous, and Wales neither saw nor required his like again. The stout Bishop’s friends and coadjutors did not live to see the end of their order. Mr. Justice Englefield, “for lernnige and discreete modest behavoor comparable with any in the Realme”,<sup>1</sup> had died in 1537. Bishop Rowland had felt his loss keenly, and begged Cromwell to replace him with “someone of lerning and experience. I

<sup>1</sup> Gerard’s *Discourse*.

shall do my part while my rude carcass shall endure. Remember the commonwealth of these parts, which if I have not help will decay again". In 1539 Sir Richard Herbert died—"the best of his name I know" said Lee. "I have as great a loss of him as though I had lost one of my arms, in Governing Powes, Kery, Kedewen, and Cloonesland". Next year he lost Sir William Sulyard and Mr. Justice Porte. Nor did the good Bishop himself long survive his colleagues. The toil, which he said had "brought many honest men to their death", was soon to bring his own "rude carcass" to the dust. About the end of January 1543 he died at the College of St. Chad's, Shrewsbury, of which his brother was Dean, and was buried in St. Chad's Church. He died at the zenith of his fame, when his work was done. He had upheld the arm of law and order in a time of anarchy. He had carried the terror of his name to the wilds of Melenith and Arwystli. He had meted out justice without favour, if without mercy. By the success of his stern administration he had made it possible for the far-sighted statesmen of Henry VIII to apply to Wales the healing policy of trust and confidence. Had he failed, the concessions of 1535 and 1542 might have been made impossible, because they would almost certainly have been misunderstood. He had bridged over the transition period between chaos and ordered liberty. He died at a fortunate juncture for his after-fame. He disliked and distrusted the policy of which the Act of 1542 was the climax, the coping-stone.<sup>1</sup> His distrust of "the Welshery" was

<sup>1</sup> The Bishop was asked in 1540 to set the Commissioners to work on the delimitation of Denbighshire and to give his opinion as to the expediency of the change. He sourly replied that he was not privy of any such commission, and trusted that his opinion would not be required, "for I am not of that perfectness to know what shall chance in time coming".

ineradicable, and he was too old to learn the lesson which not even the genius of Burke or the eloquence of Bright has sufficed to make clear to the world: that force is no remedy, and repression is “ill husbandry”. He had done what he could to postpone the day when Wales would be on a political equality with England. Had he survived, it may well be doubted if he would not have retarded rather than expedited the development of Wales into a law-abiding and contented portion of the realm. His rough and ready methods, however admirable in times of anarchy, would have provoked hostility to the law in the brighter days that were about to dawn on Wales. His rude justice would have inevitably brought him into conflict with those who were to be responsible for the government of the new Wales. He had little faith in Justices of the Peace or in jurors, and doubtless he would have used the supervising powers of the Court of the Marches to the utmost in order to restrain what, to him, would appear the partiality of justices or the corruption of juries. His Court at Ludlow was modelled on the example of the Star Chamber. For at least a century after his death it was, if not popular, at least not actively unpopular in Wales. Down to the reign of James I it undoubtedly did valuable work in the Principality. This it was able to do because it was neither meddlesome nor mischievous. It worked harmoniously with the ordinary courts, and it did not interfere unduly or capriciously with the discretion of Justices of the Peace and other officers of the law. But with a suspicious and sceptical Lord President at Ludlow, things would have fared very differently, and Bishop Rowland would probably have involved the Court of the Marches in as much unpopularity as afterwards brought about the downfall of its exemplar and prototype, the Star Chamber.

The Act of 1542 consists of one hundred and thirty sections. It recites that it was passed “at the humble

suit and petition" of the people of Wales, but no record of the petition is extant.<sup>1</sup> By dividing Wales into twelve counties, Monmouthshire, which was and has continued to be Welsh in blood, sympathy, and language, was excluded from the geographical area of the Principality.<sup>2</sup> The twelve counties of Wales were to consist of the eight ancient counties, and the four new shires created by the Act of 1535. The division of the shires into hundreds by the Commission appointed under the previous Act was confirmed. By section 4, statutory recognition was accorded to the Court of the Council of the Marches :—

"There shall be and remain a President and Council in the said Dominion and Principality of Wales, and the Marches of the same, with all Officers, Clerks, and Incidents to the same in Manner and Form as hath been heretofore used and accustomed ; which President and Council shall have Power and Authority to hear and determine, by their Wisdoms and Discretions, such causes and matters as be or hereafter shall be assigned to them by the King's Majesty, as heretofore hath been accustomed and used."

It is true that in previous Statutes, such as 26 Henry VIII, c. 4, and 26 Henry VIII, c. 6, the Court and the Lord President had been mentioned, and to some extent therefore their existence and powers had been regularised. But the Councils of the North and of the West (the former of which had been created by the King after the sup-

<sup>1</sup> It may be that the petition referred to is the one already cited from Lord Herbert's *Life of Henry VIII*. But the wording of the petition would seem to preclude that possibility, and to make it certain that that petition was presented to the King before 1535.

<sup>2</sup> It is curious with what persistence the people of Wales have clung to Monmouthshire as a Welsh county. George Owen, in his *Dialogue (Owen's Pembrokeshire, Part iii, p. 39)*, speaks of Wales as having been divided into thirteen counties. Shakespeare makes Fluellen speak of Monmouth as a Welsh town. Stephen Hughes, in the preface to one of his publications printed in the reign of Charles II, refers (as is commonly done in Wales still) to the thirteen counties of Wales. Of recent years, for the purposes of educational administration, Monmouthshire has been recognised as forming part of Wales.

pression of the Pilgrimage of Grace in 1536) had been mentioned, together with the Ludlow Court, in the Subsidy Act of 1540 (32 Henry VIII, c. 50, which was not enrolled in Chancery). But they were simply mentioned as being a source of expense to the King, though the existence of the Ludlow Court is justified on the ground that poor and rich thereby "have undelayed Justice daylye administered unto them". But the direct and regular recognition in the Statute of the Court of the Marches, which had been called into existence by the exercise of the King's prerogative, placed it in a different category from the Council of the North and the Star Chamber. It fell, with the other prerogative Courts, before the reforming energy of the Long Parliament, but, while the others fell to rise no more, the Court of the Marches was revived at the Restoration. It had, however, survived its real usefulness, and at the Revolution of 1688 it finally passed out of existence.

Side by side, however, with the Court of the Marches, there was created a new system of Courts, called "the King's Great Sessions in Wales". The twelve counties of Wales were divided into the four circuits of Chester, Carnarvon, Carmarthen, and Brecknock, and the Sessions were directed to be held twice a year in each of the twelve counties. The Justice of Chester, with a salary of £100 a year, was to hold his Sessions in Flint, Denbigh, and Montgomery; the Justice of Carnarvon, with a salary of £50, in Anglesey, Carnarvon, and Merioneth; the Justice of Carmarthen, with a salary of £50, in Cardigan, Pembroke, and Carmarthen; and the Justice of Brecknock, with a salary of £50, in Brecknock, Radnor, and Glamorgan.<sup>1</sup>

<sup>1</sup> In 1575 another Justice was added to each circuit, by 18 Eliz., c. 8. Burke, in his speech on Economical Reform, denounced the extravagance of a system which permitted eight judges to Wales, while twelve were able to cope with the legal work of England.

Each Session was to last six days. The Justices were to hold pleas of the Crown, pleas of Assizes, and all other pleas and actions, real, personal, and mixed, and to minister common justice to all the King's subjects according to the laws of England. An appeal lay from the Great Sessions to the Court of the Marches in pleas personal, and in pleas real or mixed to the English Justices of the King's Bench. Though the Court of the Marches had a concurrent as well as an appellate jurisdiction, there does not seem to have been any great conflict between the two courts. This is contrary to what might have been expected, especially when it is remembered with what jealousy the Courts of Westminster viewed the Court of the Marches. The Common Law Courts of Westminster were actuated by the natural hostility of fixed and ordinary courts to exceptional and prerogative courts. It is true, as has already been pointed out, that the Court of the Marches, differing in this from the Council of the North, did receive statutory recognition in 1542. But the jurisdiction of the Ludlow Court was wider and more comprehensive than that of its sister body, which had no appellate jurisdiction, and which could not punish treason. But while the Westminster Courts were unremitting in their hostility, and never rested till they had shorn it of much of its power, dignity, and jurisdiction, it is significant that there is no evidence of a similar jealousy and apprehension being felt by the Courts of Great Sessions. This is all the more remarkable as we find Lord Ferrers, as early as 1526, when the Ludlow Court was nothing like as powerful as it afterwards became, complaining of the extension of its jurisdiction to Carmarthen and Cardigan.

The reason for this somewhat curious fact is not far to seek. In the first place, the Justices of the Great Sessions were members of the Court of the Marches. The Chief

Justice of Chester was often the Vice-President of the Court, and was looked upon as its principal legal member. Moreover, the litigious work of the Principality could not be disposed of in the twelve days a year, which was the time fixed by the Statute for the hearing of cases in Great Sessions, and therefore there was always legitimate work for the Court of Ludlow to transact. “Generallye it is the very place of refuge for the poore oppressed of this Countrey of Wales to flye unto”—so George Owen, in 1594, makes Demetus say, in his *Dialogue on the Government of Wales*<sup>1</sup>—“and for this cause it is as greatly frequented with suytes as any one Court at Westminster whatsoever, the more for that it is the best cheape Court in England for fees, and there is great speed made in tryall of all causes”. It had the defect of its qualities. The very cheapness of the processes increased the number of vexatious and trivial suits and of attorneys, and in time this led to the undue extension of the Court’s jurisdiction. But, on the whole, at least during the sixteenth century, the Court of the Marches performed a useful and necessary part in the trial of actions. Even as late as 1641 the Court found an ardent apologist, who defended it with force and point.<sup>2</sup> Of the Courts of Great Sessions, it need only be said that they did their work, to the general satisfaction of litigants and public, till 1830, when they were abolished, and the two circuits of North and South Wales were added to the English Assize system.<sup>3</sup>

Sheriffs for each of the twelve counties were to be appointed yearly by the Crown out of three names which

<sup>1</sup> *Owen's Pembrokeshire*, Part iii, p. 23 seq.

<sup>2</sup> “Provisions for a court to be established in Wales”, *Bridgwater Papers*, Welsh Council, p. 19.

<sup>3</sup> An excellent account of the events which led to the abolition of the Courts of Great Sessions will be found in Rhys and Jones’s *Welsh People*, pp. 387-391.

were to be submitted by the President of the Council. The sheriffs were to hold their county and hundred courts monthly, and over their actions the President and the Council kept strict observation. Nearly all the Welsh sheriffs were members of the Council, and they were bound to execute all lawful commands of the Lord President and the Council. If we may trust the *Dialogue* of George Owen, which contains the best description we have of the functions of the Council of the Marches and its relations with the other local Courts and officials of Wales, sheriffs had tried, by placing a wrong construction on sections 73 and 74 of the Act of 1542, to erect new Hundred Courts for the purpose of extortion. The Council had fined sheriffs for such practices, and in Brecknockshire, at least, the evil had been nipped in the bud. But, up to the last days of the Council, its relations with the sheriffs were not cordial, and during the presidency of the Earl of Bridgwater (1631) there were instances where the sheriffs flatly refused to carry out the Council's orders.

By section 53 it was enacted that Justices of the Peace and of the Quorum, and one *custos rotulorum*, should be appointed for each county by the Lord Chancellor, on the advice of the President and the Council. By section 55 the number of such justices was limited to eight for each county—no doubt on account of the difficulty which was experienced, or feared, of finding a greater number of men of substance, position, and education to fill such posts. The limitation on the number of Justices was not removed till 1693 (5 William and Mary, c. 4). The Justices of the Peace were to hold their Sessions four times a year. The Lord President was, in practice, the Lord Lieutenant for the twelve counties of Wales, and most of the high officials of the Council were on the commission of the peace for each of the Welsh counties.

A very salutary jurisdiction was exercised by the Council over the various borough courts of Wales. George Owen, in his *Dialogue*, complains that there were too many corporate towns in Wales having private courts of record for personal actions to any amount. "There are in Wales yet (1594)", he said, "a multitude of very meane villages scarce having six houses or cottages, and yet are allowed for Corporations and Boroughs." As the Council had an appellate jurisdiction in personal actions, it was able to mitigate the evils resulting from the multiplicity of obscure Borough Courts, and in time these Courts seem to have entirely disappeared.

By section 68 it was enacted that two Coroners should be elected in each shire as in England, and by section 70 the Justices of the Peace were empowered to appoint two Chief Constables for the hundred wherein they dwelt.

Though justice was to be generally administered according to the English law, it was thought expedient to enact in particular that the old Welsh law should be superseded in two points. By section 84 it was forbidden to put a murderer or a felon to his fine, and by section 100 private arrangements between parties in cases of murder and felony were made punishable by fine and imprisonment at the discretion of the President and the Council. By sections 91 and 128 gavelkind was abolished, and the English law of descent was specifically introduced into Wales.<sup>1</sup>

Such, in its main outlines, was the policy, daringly conceived and consistently carried out, which in the result reduced Wales to a state of order and obedience to the law. It was an experiment, as novel as it was remarkable. English statesmen could point to no precedent for

<sup>1</sup> The full text of the Statute will be found in Bowen's *Statutes of Wales*, pp. 101-133.

such a policy, either in ancient or modern times. The case of Ireland was not parallel, for the “Welshery” were entrusted with responsibilities and endowed with privileges which were, for many generations, denied to the “Wild Irish”.<sup>1</sup> It was not only a policy without precedent, it was contrary to all the traditions of English statesmanship and to the spirit of the age. It was launched at a time seemingly most inopportune. The whole fabric of society was still in the throes of the convulsion caused by the Reformation; the old faith, the old learning, the old science, were passing away, “like an unsubstantial pageant faded”. “The paths trodden by the footsteps of ages were broken up; old things were passing away; and the faith and the life of ten centuries were dissolving like a dream.”<sup>2</sup> The breach with Rome had become complete, and by dissolving the monasteries, Henry had, with regal insolence, brought home the real meaning of the revolution to every part of his realm. Nowhere was the change more unwelcome than in Wales, in those days the home of lost causes and impossible dreams. Whatever may have been its proximate cause, the change in religion and the divorce of the old Queen had much to do with the rebellion of Rhys ap Griffith at Carmarthen, in 1529. Young Rhys had paid the penalty with his head, but his fate was mourned for years after by his friends and countrymen. Soothsayers, in the troubled years that followed, used the murder of “the noble young Ris” as an incentive to urge other conspirators to their doom. The whole of Wales was seething with unrest and disaffection against the innovations. The shrine of Dewi Sant was despoiled by a heretic Bishop; the image of Derfel Gadarn was mocked as an idol; the holiest sanctuaries of the old faith

<sup>1</sup> See, e.g., Lecky's *Ireland*, pp. 1-4.

<sup>2</sup> Froude's *History of England*, c. i.

were handed over to the rude hands of secular persons who recked of nothing but their own worldly advancement. It requires no evidence to convince those who know the passionately religious and conservative spirit of the Welsh people that these changes were bitterly resented by them. The commons of the North of England rose against the ruthless King; for the first and only time the throne of Henry was put in jeopardy. At the time when the Pilgrimage of Grace was most formidable, Chapuys assured his Imperial master that Wales was ripe for revolt. Bishop Rowland Lee was convinced on other grounds that Wales was not ready for the grant of a constitution. He begged the King "not to allow the Statute to go forward". Yet it was at this dark and untoward hour that a constitution was given to Wales. Even the Parliament which granted it was sceptical of the result. It gave the King the power to repeal or suspend it. That power was never exercised. The grant of a free constitution was an instantaneous success. The same "wonderful issue"<sup>1</sup> attended it in Wales as has since attended it in Canada, in South Africa, in every part of the British dominions where it has been tried. "From that moment"—to adopt the eloquent words of Burke—"as by a charm, the tumults subsided, obedience was restored, peace, order, and civilisation followed in the train of liberty. When the day-star of the English constitution had arisen in their hearts, all was harmony within and without."

Almost alone of later commentators, Burke has ascribed the credit of this miraculous achievement to the right source. Gerard, in 1575, with the shortsightedness of an alien official, while recognising the effect, mistook the cause. He set down all the credit to the stern and

<sup>1</sup> Mr. Balfour's speech on the South African Confederation, 15 August 1909.

resolute policy of the “stout Bishop”, who had so terrified the people that “within three or four years the fear of punishment wroughte firste in theym the obedience theye nowe have grown into”. Subsequent writers have followed Gerard, and Bishop Rowland has come to be regarded as the pacifier and civiliser of Wales. But a calm and dispassionate review of the circumstances will set the Bishop’s achievement in its right perspective. He was in office for less than nine years, and however vigorous his administration and ruthless his methods, it would require more than nine years of resolute government to change the habits and to transform the character of a whole people. Nor should it be forgotten that the Bishop’s energies were limited to the border counties. His letters bear witness to his incessant activities in Cheshire and Shropshire, Montgomeryshire and Radnorshire, and occasionally Monmouthshire and Brecknockshire. With the rest of Wales he had little or nothing to do. We have no record that he ever visited Carmarthenshire, Pembrokeshire, and Cardiganshire in the south, or Merionethshire, Carnarvonshire, and Anglesea in the north. He himself states that Merioneth and Cardigan, though shire ground, were as disturbed and lawless as the borderland, and we know, from Sir John Wynn’s lively narrative, that Carnarvonshire was as turbulent as any portion of Wales. Whatever effect the Bishop’s administration may have had in the eastern counties, his influence can hardly have extended to the rest of the Principality, which he never even saw. But not only those parts under the Bishop’s rule, but the whole of Wales, settled down to cultivate the arts of peace after the time of Henry VIII. We hear, it is true, of the “*Gwylliaid Cochion Mawddwy*” (the Red Bandits of Mawddwy) in the reign of Edward VI; one of the King’s judges even was slain in one of the wild gorges of Merioneth while

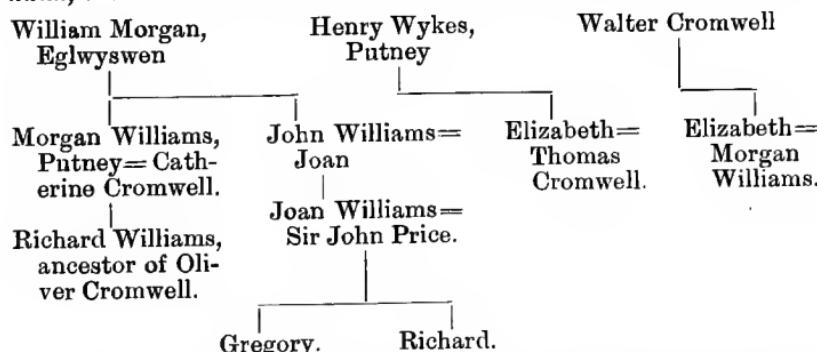
he was going circuit. In Gerard's time there were still three or four disturbed and lawless "petty corners", and George Owen specifically mentions the north-east part of Cardiganshire, and the wild districts of Arwystli, as being dangerous to the traveller. But on the whole, and speaking generally, Wales became peaceful and law-abiding in the second half of the sixteenth century. The fact that every part of the Principality showed the same tendency at the same time is proof that the influences at work were general and not particular, permanent and not transient. Wales was transfigured; the habits, customs, and even the character—"the Welshery"—of Welshmen were changed, not because of "the fear of punishment", but because the grant of free institutions had removed the causes which had led to the growth of the evils. Dr. David Powel, in his *History of Cambria*, passed a sounder judgment on the causes which led to the pacification of Wales. "There was never anie thing so beneficall to the Common people of Wales", he declared, "as the uniting of the countre to the crowne and kingdom of England," which had resulted in having "an uniformitie of government established." George Owen, also, at the end of Elizabeth's reign, asserted that Wales had been brought to "great civilisation", not by the coercion of a strong ruler, but by the beneficent effect of good and wholesome laws.

It is less important, though, perhaps, even more interesting, to inquire to whom the credit is due for initiating and carrying through the experiment of killing "Welshery" by trusting Welshmen. The Statute of 1542 refers to "petitions" from the people of Wales. One of these has already been given at length. Its author, as has already been said, was probably Sir John Price of Brecon. Sir John's close connection by marriage with Thomas Crom-

well' lends colour to the suggestion. If, as the Act relates, the impulse came from Wales, it must have come from some one who had the ear of Henry's ministers, and of all contemporary Welshmen Sir John Price stands out as the man who, by his influence in high quarters and by his confidence in the political capacity and natural generosity of the Welsh people, can with some certainty be named as the inspirer of the liberal policy of Henry VIII towards Wales.

To Thomas Cromwell, also, some of the credit must be ascribed. His character and career are even more mysterious than those of his master, but of his greatness there can be no question. He was Secretary of State in 1534, when Rowland Lee was sent to Ludlow. He was almost at the zenith of his power when the Act of Union was passed. He acquiesced in—perhaps even suggested—the appointment of Welshmen to be Justices of the Peace. Before he fell, in the summer of 1540, the Commission which was to prescribe the limits of the counties, to divide them into hundreds, and to appoint the county towns in Wales—to complete, in fine, the making of Modern Wales

<sup>1</sup> The following table, taken from J. H. Davies's edition of *Yn y Llyvr hwnn*, shews the connection of Sir John Price with the Cromwells :—



In an earlier note, through inadvertence, Sir John Price's book was said to be entitled *Oll Synwyr pen pob Kymero*, instead of *Yn y Llyvr hwnn*, and the mistake was only discovered when the sheet had been printed.

—had commenced its work. He may not have been the inspirer of the policy, but he was, at least, a willing and active instrument in carrying it out. Its very novelty and audacity would have appealed to that adventurous spirit, whose motto was “To make or mar”.

But no estimate of the forces at work in the regeneration of Wales would be complete which failed to take into account the character and personality of the King. To one school of historians Henry VIII is the very type of a savage and bloodthirsty tyrant, the creature of caprice, the slave of passion, incapable of generous and far-sighted statesmanship. In their view, Henry was so bent on pursuing his personal quarrel with Rome, and on enriching himself at the expense of the Church, so taken up with the excitements of his changing amours, that he was either blind or indifferent to what was passing in the domain of higher statesmanship, and remained a mere passive and careless spectator of events which he had neither the will nor the capacity to direct and control. To the other school of historians, Henry is the dominant personality of his age, “every inch a king”, “the majestic lord who broke the bonds of Rome” not from passion or caprice but from deep and far-sighted design. “The great factor in the whole complication”, said Stubbs,<sup>1</sup> “is the strong, intelligent, self-willed force of the king ; that alone seems to give purpose and consistency to the eventful policy of the period ; Henry VIII is neither the puppet of parties, nor the victim of circumstances, nor the shifty politician, nor the capricious tyrant, but a man of light and leading, of power, force, and foresight, a man of opportunities, strata-gemis, and surprises, but not the less of iron will and determined purpose ; purpose not at once realised or

<sup>1</sup> Stubbs, *Mediaeval and Modern History*, pp. 283, 306, etc.

systematised, but widening, deepening, and strengthening as the way opens before it.” He regards Henry “as the main originator of the greatest and most critical changes of his reign”, and asserts that “no minister, great or small, after the fall of Wolsey, can claim anything like an original share in determining the royal policy”. Such a theory, it is true, necessitates the belief of great development of design and new purpose in the King as his reign proceeded, but the historian does not shrink from adopting that solution. “From the very beginning of his reign he is finding out what he can do.” He ruled through his ministers and council, but “on the whole Henry was his own chief counsellor”.

This estimate of the King’s character accords with the course of the development of the Welsh policy of his reign. At first Wales was ignored. In 1525, when the death of Sir Rhys ap Thomas forced the affairs of the Principality upon his notice, the King was content merely to revive his father’s policy by sending the Princess Mary to hold her court at Ludlow. As he became aware of the anarchy that prevailed, he resorted to stronger measures. He sent Rowland Lee to reduce the land to order. But with increasing knowledge came a greater grasp of the situation and a clearer perception of the dimensions of the problem. It may be that he was stirred to unusual effort by affection for the country from which the Tudors had sprung, and by a belated remembrance of his father’s dying charge. He authorised, even if he did not suggest, the grant of a constitution to the distracted land. Had he been a mere passive and listless spectator of events, content to register the decrees of his ministers, the Welsh policy which was commenced in 1534 would have ended with the fall of Cromwell in 1540. By abandoning that policy, Henry would have followed the line of least resistance. The

Lord President was reluctant, if not hostile. The other officials in Wales viewed it with alarm and dismay. There was no member of his Council who cared enough about Wales, or who was endowed with sufficient insight and foresight, to urge upon the King the continuance of his progressive policy. It would have been easy for Henry, had he so wished, to exercise the powers conferred upon him by Parliament to suspend or repeal the Statute of 1535. The fact that the policy was neither subversed nor retarded after Cromwell's fall—that, indeed, it was continued, developed, and completed two years after his death—affords the strongest evidence that the King took an active, personal, and intelligent interest in its promotion. It has been said that Henry VIII was the greatest king that ever ruled over England, because he always had his own way. In his ecclesiastical policy, in his dealings with Scotland and Ireland, in his relations with the great powers of the Continent, he was invariably fortunate. No Pavia or Innsbrück checked his victorious career. But in no department of government was he more successful than in his dealings with the land of the Tudors ; in no other direction did he display greater qualities of statesmanship. With unerring skill he diagnosed the evils from which the country was suffering. With supreme and serene courage he applied the remedy. His policy was one of inspired common sense, which no statesman, bereft of sympathy and imagination, could have conceived. The stage upon which he was called to display these great qualities was small, and on that account the real magnitude of his achievement has been overlooked. English historians have treated it in a superficial and perfunctory manner, when they have deigned to refer to it at all. The measure of the man is brought to an impartial test in his Welsh policy. Here at least he was

stirred by no selfish or ignoble motives, and there can be no question about his success. Wales became, and has ever since remained, a loyal, criueless, and easily-governed portion of the British dominions. In spite of the changes which the influx of straugers has wrought in the social condition of the industrial districts of South Wales, the proud boast of the Welsh poet is still substantially true :

“Pa wlad wedi'r siarad sydd  
Mor lân a Chymru lonydd ? ”<sup>1</sup>

The success of his policy in Wales has had its effect on British policy generally. In after-times it came to be regarded as a precedent and an inspiration, and on the principles upon which Henry VIII proceeded in his pacification of Wales has been based the mighty fabric of the British Empire.

<sup>1</sup> “What land, when all is said, so pure as peaceful Wales.”













